Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	
	)	

COMMENTS OF GENERAL COMMUNICATION, INC.

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General Communication, Inc. ("GCI") submits these comments pursuant to the Federal Communications Commission's ("Commission") *Public Notice* released on July 25, 2006, as modified by the Commission's August 29, 2006 Order,[1] in the above-referenced docket. In its *Public Notice,* the Commission seeks comments on the "Missoula Plan," an intercarrier compensation reform proposal filed on July 24, 2006 by the National Association of Regulatory Utility Commissioners' ("NARUC's") Task Force on Intercarrier Compensation.

Intercarrier compensation reform is critical to the deployment of next generation networks and services, especially in rural areas. Rational compensation policies will drive up investment and drive down costs, shoring up the universal service fund along the way – all to the benefit of consumers. The Missoula Plan will *not* deliver this consumer benefit. Rather, it perpetuates the existing infirmities of the intercarrier compensation regime for the benefit of incumbent local exchange carriers ("ILECs") and supplies the bricks and mortar that will wall off rural consumers, in particular, from the promise of economic development that comes with technology investments by incumbent and

[1] *Developing a Unified Intercarrier Compensation Regime*, Order, CC Docket No. 01-92, DA 06-1730 (2006) (Commission extends the pleading cycle).

competitive providers alike. The Commission should not adopt this or any plan that ignores its principles of intercarrier compensation reform: economic efficiency; universal service; and competitive and technological neutrality.

I. INTRODUCTION AND SUMMARY

GCI is a diversified telecommunications, information services, and cable television provider operating primarily in Alaska. GCI provides long distance service and high-speed and dial-up Internet access throughout Alaska, including dedicated Internet access in many remote parts of the Alaska bush. GCI provides cable services in 36 Alaskan communities and areas, including Anchorage, Fairbanks, Juneau, and the Mat-Su Valley, the fastest growing region in Alaska. And GCI offers competitive local telephone service – along with long distance service, cable service, and high-speed and dial-up Internet access – to customers in Anchorage, Fairbanks and Juneau, competing with the Alaska Communications Systems ("ACS"),[2] the incumbent local exchange carrier. In addition, GCI has recently been certified to provide local service in additional Alaska communities.[3] GCI serves both the business and residential market, and has been

[2] In the areas that GCI currently provides local telephone service, the ILECs are the operating subsidiaries of Alaska Communications Systems Group, Inc., ACS of Anchorage, ACS of Alaska, Inc., and ACS of Fairbanks, Inc. (collectively "ACS"). ACS is a rate-of-return ILEC. With the exception of ACS of Anchorage, it also is designated as a rural telephone company pursuant to 47 U.S.C. § 153(37). Under rulings from the Regulatory Commission of Alaska, the rural exemption no longer limits GCI's ability to provide local service in Juneau, Fairbanks, the Mat-Su valley and Ketchikan.

[3] In Order U-05-004(1), issued September 23, 2005, the RCA granted GCI the authority to offer competitive local service in the areas currently served by incumbents Cordova Telephone Cooperative, Copper Valley Telephone Cooperative, Inc., Ketchikan Public Utilities, Matanuska Telephone Association and ACS-N, Glacier State. In Order U-05-004(6), issued February 2, 2006, the RCA granted GCI the authority to offer local service in the areas currently served by incumbents Alaska Power and Telephone Company, United Utilities-KUC, and TelAlaska Inc. The affected rural ILECs have appealed various aspects of the certification rulings.

designated an eligible telecommunications carrier ("ETC") by the Regulatory Commission of Alaska ("RCA").

GCI strongly supports meaningful intercarrier compensation reform. GCI therefore does not support the Missoula Plan. While it is presented as a consensus proposal to reform intercarrier compensation, in reality, it simply retains old regulatory distinctions, and imposes anticompetitive new intercarrier compensation rates and structures, that are meant to benefit one group of carriers – the ILECs – at the expense of all other carriers and, ultimately, consumers. The Commission should make no mistake: the Missoula Plan's sole purpose is to insulate the ILECs' intercarrier compensation revenues – which are declining as traffic moves off their networks and onto the networks of other carriers – from the forces of competition. In essence, the ILECs are trying to achieve through regulation what they can't achieve in the marketplace.

The fundamental flaw in the Missoula Plan is that it perpetuates – and worsens – the inefficiencies and unfairness of the existing intercarrier compensation regime solely to protect the ILECs. It achieves this end by maintaining distinctions based on:

- Jurisdiction (*i.e.,* intrastate or interstate), which preserves the historic regulatory classification of a call (*i.e.*, access or non-access);
- Carrier classification (*i.e.,* incumbent or competitor); and
- Market (*i.e.*, urban or rural).

Most of these distinctions are the direct result of the Missoula Plan's reliance on "tracks." A carrier's "track" (*i.e.,* Track 1, 2, or 3) establishes its intercarrier compensation rate levels and structures.[4] The problem with the Missoula Plan's reliance

[4] In Alaska, ACS's ILEC operating subsidiaries would be categorized as Track 2 carriers. All other ILECs would be categorized as Track 3 carriers. GCI would be characterized as a Track 1 carrier, even though GCI only competes in Track 2 and Track 3 markets.

on tracks is that it perpetuates arbitrary regulatory distinctions that foreclose the emergence of competitive markets, particularly in rural areas. The Missoula Plan, most notably, does not make any attempt to achieve intercarrier compensation reform in Track 3 markets. In these markets, Track 3 carriers are allowed to preserve separate reciprocal compensation and access charge rates, instead of transitioning to uniform originating and terminating rates, like Track 1 and Track 2 carriers. There is no economically rational basis to retain distinctions between access charges and reciprocal compensation in any market, including rural markets, given that the transport and switching functions performed are the same. Indeed, the retention of different rate levels and structures for "access" and "non-access" traffic places interexchange carriers ("IXCs") at a significant disadvantage relative to wireless carriers, which forces traffic off wireline networks and onto wireless networks and provides carriers with an incentive to choose wireless technologies, even when wireline technologies could better serve the market. Moreover, were the Commission to eliminate the distinctions between access charges and reciprocal compensation, the resulting uniform rate could resolve the problem of "phantom traffic." After all, the implementation of a national, uniform rate for the termination of all traffic is a much more stable and efficient solution to this problem than creating a whole new set of Byzantine rules, as set forth by the Missoula Plan proponents.

Likewise, Track 3 carriers are never required to reduce their intercarrier compensation rates. Instead, their interstate access charge rates remain at existing levels – levels that are far above the rates charged by Track 1 and Track 2 carriers – and their reciprocal compensation rates are actually allowed to rise to the same level over time. And worse still, Track 3 carriers are allowed to charge much higher rates than their in-market competitors for the provision of the same services, erecting a substantial barrier to competitive entry.

The Missoula Plan presumably ignores Track 3 markets based on the convenient but entirely wrong premise that competition cannot reach, and will not benefit, rural areas, so there is no need to address intercarrier compensation reform. But GCI's experience in Alaska proves the fallacy and risk of this approach. In addition to providing competitive local and long distance telecommunications services, GCI provides wireless broadband services to 118 remote, rural communities and broadband cable modem services to more than 80 percent of Alaskans, including many outside Alaska's three main cities. GCI also is expanding local service to 70 additional communities over the next five years. GCI has made these investments without the revenue guarantees sought by the ILECs.

"Protecting" Track 3 markets from intercarrier compensation reform really protects the rural ILECs serving those markets, at the expense of rural consumers. Customers in rural markets – and customers in Alaska, in particular – will pay more, and receive less, than customers in urban markets in the lower 48. For example, the retention of inflated access charge rates undermines statewide and nationwide calling plans for Alaskans that are comparable to those offered in the rest of the country, consistent with Congress' commitment to geographic rate averaging and rate integration. Carriers, including GCI, will be forced to make technology choices based on treatment under the intercarrier compensation rules, not based on an assessment of the best technology to serve a rural market. This hinders rural deployment of evolving new technologies that are available to consumers in the continental United States. And most importantly, consumers in Track 3 markets will never enjoy the benefits of competition that GCI has delivered in Alaska, including the deployment of new services and new service packages, lower rates, and infrastructure investment, particularly broadband investment.

The Missoula Plan's "protection" of rural markets is not limited to the intercarrier compensation provisions. The new interconnection provisions – which are wholly unnecessary for intercarrier compensation reform – impose onerous interconnection and transport obligations on competitors interconnecting with Track 2 and Track 3 carriers. These provisions erect a substantial barrier to entry by shifting a large portion of the ILEC's interconnection and transport costs to its competitor, despite the fact that both the ILEC and its competitor will charge identical rates to terminate non-access traffic. Worse still, a proposal set forth by the Alaska ILECs would undo existing competition by allowing those ILECs to force interconnection at currently non-existent access tandems. This proposal, if enacted, would eliminate the competitive transport market that has developed in Alaska, because no facilities-based competitor would be able to compete with an ILEC that is able to deploy access tandems and associated transport links that are subsidized through universal service support and tariff pooling. It is critical for the Commission to recognize that the interconnection provisions contained in the Missoula Plan do not merely maintain the status quo for Track 2 and Track 3 carriers. To the contrary, these provisions make rural ILECs better off than they are today, all at the expense of competition and consumers.

Finally, the Missoula Plan undermines, rather than promotes, universal service. The Missoula Plan's commitment to ILEC revenue neutrality imposes greater burdens on the federal Universal Service Fund ("USF"). The ILECs are over-earning under the existing intercarrier compensation regime, so there should be no presumption that they need the same level of revenues to deliver universal service. Indeed, preserving the ILECs' existing intercarrier compensation revenues merely maintains a USF that already is straining under its own weight. GCI's fundamental concern about the Missoula Plan, however, is that in addition to permanently maintaining ILEC revenue streams, it also erects new barriers to competitive entry, particularly in rural markets. These barriers are created by the combination of the intercarrier compensation provisions of the plan, which perpetuate, and worsen, the inefficiencies and unfairness of the current regime to the advantage of rural ILECs; the new interconnection provisions, which foreclose the development of competition in rural markets by raising competitors' interconnection and transport costs; and the creation of new, ILEC-exclusive subsidies, which provide the ILECs with a significant, anti-competitive cost advantage over their competitors. The problem with this combination of policies is that it effectively forecloses competition, which, in GCI's experience, is the best means to deliver universal service broadly and at the lowest cost, because it forces all providers to become more efficient, and therefore less reliant on the USF. By erecting barriers to competition, however, the Missoula Plan not only forces consumers to contribute an additional $2.225 billion to universal service – a 32 percent increase in the current $7 billion USF – it eliminates any mechanism that would reduce the level of required support over time.

The Missoula Plan's fundamental purpose – ILEC revenue preservation – should come as no surprise, given the process by which the plan was formulated. While GCI commends the efforts of NARUC to develop broad-based consensus around an intercarrier compensation reform package, it is important for the Commission to recognize that the final birthing of the Missoula Plan was through a closed-door process, with the price of entry being full pre-commitment to the plan. Given the substantial violence the proposals do to sound competitive principles, GCI along with many other interested parties could not afford this price. As a result, the vast majority of the supporters of the Missoula Plan are ILECs, and in particular, rural ILECs, which had a seat at the table. By contrast, the Missoula Plan is fervently opposed by a broad range of interest groups, including competitive local exchange carriers ("CLECs"), wireless carriers, cable providers, and consumers. GCI urges the Commission to reject the Missoula Plan and adopt a rational intercarrier compensation reform package that earns broad support from both industry and consumers.

II. INTERCARRIER COMPENSATION

A. By Forgoing Competitive Neutrality, the Missoula Plan Cannot Fulfill Any of the Commission's Goals for Intercarrier Compensation Reform.

The Commission has articulated three principal goals for intercarrier compensation reform:

1. promoting economic efficiency;
2. preserving universal service; and
3. achieving competitive and technological neutrality.[5]

Based on GCI's experience in Alaska, competitive neutrality is the most important of these three goals, because competitive neutrality is a necessary precondition for an intercarrier compensation regime that is both efficient and consistent with the preservation of universal service. For instance, in the absence of competitive neutrality,

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[5] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, 20 FCC Rcd. 4685, 4702 (2005) ("*2005 Unified Intercarrier Compensation FNPRM*").

the ILECs retain strong incentives to remain inefficient and overly reliant on universal service support. A competitively neutral intercarrier compensation system, by contrast, would lower barriers to entry and force the ILECs to reduce their costs – and, by extension, their reliance on the USF – in the face of competition. This reduces the overall size of the USF and promotes the Commission's universal service goals. Moreover, a competitively neutral intercarrier compensation system would eliminate mechanisms that have traditionally but unfairly preferred the ILECs, such as the access charge regime. This, in turn, would promote economic efficiency, because carriers would choose technologies best suited to meet the needs of the market, and not based on any advantages conferred by the intercarrier compensation rules. Competitive neutrality also would promote economic efficiency by eliminating incentives for arbitrage.

The Commission summarized its commitment to this important goal as follows:

> We favor an approach that provides regulatory certainty where possible and limits both the need for regulatory intervention and arbitrage concerns arising from regulatory distinctions unrelated to cost differences. Similar types of traffic should be subject to similar rules. Similar types of functions should be subject to similar types of cost recovery mechanisms. We are interested in not only similar rates for similar functions, but also in a regime that would apply these rates in a uniform manner for all traffic.[6]

Thus, in order to achieve competitive neutrality, the Commission must adopt a system in which intercarrier compensation rates and structures are uniform across jurisdictions, regardless of the historical categorization of the traffic that is carried, the type of carrier originating and terminating traffic, and the market served. In other words, the ultimate goal should be synchronization. The Missoula Plan does not achieve this

[6] *Id.*

outcome. To the contrary, the Missoula Plan retains old regulatory distinctions, and imposes anticompetitive intercarrier compensation rates and structures, based on:

- the jurisdiction of a call (*i.e.*, interstate or intrastate) and the historical regulatory classification of a call (*i.e.*, access or non-access);
- whether a carrier is an ILEC or a non-ILEC; and
- the definition of the market in which traffic is exchanged (*i.e.*, rural or non-rural).

Most of these distinctions are the direct result of the Missoula Plan's reliance on "tracks." A carrier's "track" (*i.e.*, Track 1, 2, or 3) establishes its intercarrier compensation rate levels and structures. The Missoula Plan's reliance on tracks perpetuates arbitrary regulatory distinctions that foreclose the emergence of competitive markets, particularly in rural areas. For example, the Missoula Plan allows one category of competitors – rural ILECs – to charge much higher intercarrier compensation rates than their competitors. To the extent that carriers are performing the same functions, they should charge the same rates. Hence, allowing rural ILECs (*i.e.*, Track 2 and Track 3 carriers) to charge relatively higher rates, despite the fact that a Track 1 competitor performs the same switching and transport functions within the same market, has no economically sound basis and places the competitor at a significant cost disadvantage. Yet under the Missoula Plan, a non-ILEC is forced to pay more, and charge less, than the rural ILEC with which it competes.

Further, the application of different rates to traffic that only differs based on its historical regulatory classification is inefficient where carriers provide the same transport and switching functions. In other words, there is no economically rational basis to retain distinctions between access charges and reciprocal compensation in any market, including rural markets. Nonetheless, the Missoula Plan preserves this distinction for

Track 3 carriers. To the extent that the Commission retains such rate distinctions for the performance of the same functions, it encourages arbitrage and places some carriers – notably wireline IXCs – at competitive disadvantage.[7]

Likewise, by allowing the Track 3 carriers' intrastate and interstate access charges to remain at levels far above the corresponding rates charged by all other carriers, the Missoula Plan threatens to reduce competitive alternatives in rural areas and undermine the federal and Congressional commitment to rate integration. Carriers such as GCI that originate and terminate the majority of their traffic predominately in rural areas will not be able to compete against large, national carriers that can absorb elevated access charges within a predominately non-rural traffic mix. The net result is that rural consumers and, in particular, Alaska consumers, will pay more for less attractive service packages than customers in non-rural areas. The failure to secure competitive neutrality is thus in direct conflict with the Commission's goal of preserving universal service.

In summary, the Missoula Plan does not remedy the lack of synchronization that is inherent in the current intercarrier compensation regime. In fact, "tracks" that provide rural ILECs significant regulatory advantages that deter competitive entry make the existing regime even worse. The Commission should therefore reject the Missoula Plan in its entirety because it does not constitute true intercarrier compensation reform. To the contrary, real reform would implement a national, uniform rate for all carriers and all terminating traffic.

[7] For example, the Missoula Plan's inclusion of detailed new rules to address phantom traffic is perplexing given that the easiest solution to this problem is to eliminate the difference between reciprocal compensation rates and access charges and treat all traffic similarly. After all, if there is no difference between the rate levels and structures for access and non-access traffic, a carrier will have no incentive to strip call identifying information in an attempt to reduce its intercarrier compensation costs.

B. The Missoula Plan Perpetuates – and Worsens – the Inefficiencies and Unfairness of the Current Intercarrier Compensation Regime to Protect the ILECs.

As stated above, the Missoula Plan does not achieve true intercarrier compensation reform, because it maintains old regulatory distinctions among carriers, traffic, and jurisdictions that would not otherwise be sustained in competitive markets. These distinctions, which solely benefit ILECs by erecting barriers against competitive entry, can be summarized as follows.

1. Jurisdiction and Historical Call Classification.

The Missoula Plan proponents argue that the plan eventually achieves rate uniformity by requiring Track 1 and Track 2 carriers to reduce and unify all terminating charges (*i.e.*, reciprocal compensation, intrastate access, and interstate access), and to reduce originating charges. Track 3 carriers, by contrast, are required to reduce their intrastate access rates (both originating and terminating) to the level and structure of their interstate access rates, while reciprocal compensation rates are also capped at interstate levels.

The problem with this scheme is that it doesn't actually achieve rate uniformity across jurisdictions because it exempts intrastate access charges from the terms of the plan. For example, for Track 1 and Track 2 carriers, State implementation of the plan relating to intrastate originating access charges will be purely voluntary. Likewise, for Track 3 carriers, State implementation of the plan relating to both intrastate originating and terminating access charges will be voluntary. In other words, a State doesn't have to implement the access charge rate reductions mandated by the Missoula Plan. States historically have kept local rates artificially low, particularly in rural markets, through the use of subsidies embedded in intrastate access rates. Of course, a State is not particularly likely to reduce intrastate access charges, in conformance with the Missoula Plan, when doing so would probably necessitate retail rate increases.[8] Recognizing this, the Missoula Plan proponents offer the Early Adopter Fund – which is intended to "reward" States that undertake this effort. This hardly addresses the disincentive for a State to opt in, however, because by all accounts, the Early Adopter Fund is woefully under-funded. Moreover, while a carrier can ask the Commission to preempt a State's authority over a Track 1 or Track 2 carrier's intrastate originating access charges, there is no corresponding preemption mechanism for a carrier that wants to challenge a Track 3 carrier's intrastate access rates. Thus, the States' ability to "opt-out" of the Missoula Plan undercuts the transition to a national, uniform rate. In effect, the Missoula Plan simply perpetuates the differential between interstate and intrastate access rates, particularly in Track 3 markets.

[8] ILECs should not be guaranteed their existing level of intrastate access charge revenues through the Restructure Mechanism, which is a federal universal service mechanism. To the contrary, States have the primary responsibility to ensure that ILECs recover their intrastate costs on an intrastate basis. Thus, to the extent that intrastate access charges are reduced, ILECs must be allowed to recover any claimed revenue shortfall through changes to retail rates, at least up to an affordability benchmark. *See* Section IV.B. Indeed, federal universal service mechanisms only should compensate the ILECs for any real *costs* that are not recovered through a combination of increased retail rates, increased SLCs, and reduced intrastate access charges. To the extent that a State allows an ILEC to recover any revenue shortfall created by a reduction in its intrastate rates from a federal universal service mechanism – without first taking steps to enable the ILEC to recover its intrastate costs on an intrastate basis – the State potentially violates Section 254(f), which precludes a State from "rely[ing] on or burden[ing] Federal universal service support mechanisms." 47 U.S.C. § 254(f).

Inflated intrastate access charges place GCI wireline services at a competitive disadvantage relative to wireless carriers in Alaska.[9] Under the current regime, IXCs such as GCI pay very high intrastate access charges when they originate and terminate calls between ILEC local calling areas.[10] However, while these wireline calls are designated as toll calls for which access charges are due, a wireless carrier can originate the same call as a "local" call and pay lower reciprocal compensation rates to the terminating carrier.[11] This difference in treatment for what is essentially the same call results because the Commission's rules provide that reciprocal compensation applies to any wireless-to-LEC call (regardless of the network on which the call originates) that

[9] This problem results from the retention of intrastate access charges. Under the Missoula Plan, a Track 3 carrier's reciprocal compensation and intrastate access charge rates are capped at the carrier's interstate terminating access rate. In essence, reciprocal compensation, intrastate access, and interstate access may be unified over time. For Tracks 1 and 2, all traffic is terminated at a unified rate, so once again, there is no difference between interstate access and reciprocal compensation. However, if a State can opt-out of the Missoula Plan with respect to intrastate access charges, it can keep those charges at levels above the corresponding rates for reciprocal compensation. This, in turn, results in the wireline-to-wireless shift described herein.

[10] MCI just raised its pre-paid calling card rates for in-state Alaska calls from three cents per minute to 35 cents per minute, allegedly based on the comparatively high nature of the Alaska intrastate access charges. *See* "MCI bumps card rates from 3 to 35 cents a minute," Anchorage Daily News, Sept. 28, 2006 (A1), *available at* http://www.adn.com/money/story/8241947p-8138708c.html. The RCA immediately prohibited MCI from implementing the increase and ordered MCI not to increase its intrastate prepaid calling card rates without RCA approval. *In the Matter of the Investigation of the Planned Rate Increase for Pre-paid Calling Card Services by MCI Communications Services, Inc. d/b/a Verizon Business Services,* Regulatory Commission of Alaska, U-06-117 (October 20, 2006).

[11] To the extent that the wireless carrier terminates the call, it actually gets paid terminating reciprocal compensation by the originating carrier. And a wireless carrier, unlike an IXC, never pays intercarrier compensation to originate a call. This highlights how the Missoula Plan discriminates against certain classes of carriers by preserving arbitrary regulatory distinctions.

originates and terminates within the same MTA.[12] Alaska is a single MTA. Hence, all calls that originate or terminate on wireless networks in Alaska are "local" calls for which reciprocal compensation, and not intrastate access, is due. The net result is that inflated intrastate access charges – which are retained under the Missoula Plan – place IXCs at a significant competitive disadvantage relative to wireless carriers.

Two very significant problems result from the retention of intrastate access charge rates that are different than the rates for reciprocal compensation. First, the wireless carrier's price advantage siphons traffic off the wireline network. This, in turn, increases the ILECs' already inflated intrastate access charge rates, because the ILEC has fewer total minutes from which to recover its intrastate revenue requirement.[13] Second, maintaining these disparities will discourage innovative providers from investing in Track 3 markets – where the distinction between access charges and reciprocal compensation is preserved – using combinations of wireless and wireline technologies. This deprives rural consumers of the services that can be provided over a converged network. As a telecommunications carrier operating in a rural state that offers services over a variety of technological platforms, GCI opposes this aspect of the Missoula Plan, because it burdens rural consumers for the sole purpose of preserving ILEC intrastate access charge revenues.

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[12] 47 C.F.R. § 51.701(b)(2).

[13] The Missoula Plan's proponents will likely argue that GCI's concerns are without merit, because the plan places significant new limitations on the types of wireline-to-wireless and wireless-to-wireline calls for which reciprocal compensation, and not access charges, is due. *See* Missoula Plan at 28-29. GCI believes that rather than limiting the scope of the "MTA rule," *see* 47 C.F.R. § 51.701(b)(2), and applying the outdated access charge regime to wireless carriers, the Commission should instead require all carriers to charge a national, uniform rate to terminate all types of traffic. This would eliminate any disparity in rates paid by providers using different technologies.

Real intercarrier compensation reform would require all carriers to charge a national, uniform rate to terminate all traffic, without regard to jurisdiction. That being said, the transition to a uniform rate would necessitate significant changes to intrastate rate structures, as the ILECs are forced to become less reliant on intercarrier compensation payments and more reliant on the retail revenues they earn from their own end user customers. GCI therefore believes the States should play an important role in developing transitional mechanisms that will achieve intercarrier compensation reform and avoid disruptive retail rate increases.

2. Carrier Classification.

In addition to maintaining the old regulatory distinctions embedded in the current intercarrier compensation regime, the Missoula Plan creates new distinctions based on the classification of the carrier as an ILEC or a non-ILEC. Under the Missoula Plan, all ILECs are assigned to one of three "tracks." Smaller, more rural ILECs (*i.e.*, Track 2 and Track 3) carriers are allowed to charge higher intercarrier compensation rates than their Track 1 counterparts. However, all non-ILECs – including CLECs, cable companies, and wireless providers – are assigned to Track 1, regardless of the markets they serve. The net effect is that when a non-ILEC competes with a Track 2 or Track 3 carrier, the non-ILEC is forced to charge lower, Track 1 rates, while the ILEC is allowed to collect higher Track 2 or Track 3 rates, at least with regard to access charges. This outcome is not competitively neutral and it is directly contrary to Commission precedent.

In the *CLEC Access Charge Reform Order,* the Commission set a benchmark for CLEC interstate switched access charge rates at the "rate of the competing ILEC."[14] In other words, CLEC access charge rates that are at or below the benchmark are presumed to be just and reasonable and CLECs may impose them by tariff.[15] The Commission's rationale for adopting this rule is sound: "by moving CLEC access tariffs to the competing ILEC rate, we intend to permit CLECs to receive revenues equivalent to those the ILECs receive *from IXCs.*"[16] Given the fact that both the ILEC and the CLEC are performing the same functions in the same market, there is no basis for forcing disparate rates. Moreover, as the Commission explained, "CLECs should not be deprived of revenue streams available to the incumbent monopolists with which they compete."[17] Thus, in benchmarking a CLEC's rate to the ILEC's rate, the Commission ensured competitive neutrality.

GCI believes that fair access to revenue flows must be maintained under any intercarrier compensation regime. The Missoula Plan, however, undermines this principle by allowing Track 2 and Track 3 carriers to charge higher access rates than the non-ILECs with which they compete. This aspect of the Missoula Plan is therefore directly contrary to the precedent established in the *CLEC Access Charge Reform Order*. The ultimate result is that the difference in access charge rates keeps a non-ILEC competitor out of the market by artificially denying it revenues that otherwise would be

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[14] *In re Access Charge Reform,* Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 9923, 9924 (2001) ("*CLEC Access Charge Reform Order*").

[15] *Id.*

[16] *Id.* at 9945 (emphasis in original).

[17] *Id.*

available in that market. This, in turn, erects a barrier to entry that suppresses investment and eliminates any incentive for the ILEC to become more efficient by reducing its costs in the face of competition.

The Missoula Plan also is internally inconsistent because it allows a non-ILEC to mirror the reciprocal compensation rates charged by the ILEC – regardless of the ILEC's "track" – when the non-ILEC competes in the same market.[18] However, the Missoula Plan provides no explanation for the fact that a non-ILEC is allowed to mirror reciprocal compensation rates but not access charges.[19] This distinction is arbitrary and unfair given that the functions associated with originating and terminating local and toll calls are essentially the same. As the Commission noted in the *2005 Unified Intercarrier Compensation FNPRM*, the historical difference between access charges and reciprocal compensation rates reflects regulatory policy choices, not an underlying difference in costs.[20]

It also is unclear how the distinction between reciprocal compensation and access charges would apply to a Track 2 carrier. Under the Missoula Plan, a Track 2 carrier's originating and terminating rates are gradually reduced to unified originating and terminating rates. During the transition to uniform rates, the Missoula Plan retains the distinction between reciprocal compensation and access, which triggers GCI's concerns

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[18] Missoula Plan at 36.

[19] This creates absurd results in Track 3 markets, where a competitor is allowed to charge the Track 3 carrier's reciprocal compensation rates but only is permitted to charge Track 1 rates for access traffic. Because a Track 3 carrier's reciprocal compensation is capped at the level of its interstate access charge rates, the Track 1 carrier's corresponding reciprocal compensation rates will be much higher than its access charge rates. Contrast this with the existing regime, where access charge rates are far above reciprocal compensation rates.

[20] *2005 Unified Intercarrier Compensation FNPRM* at 4687.

about competitive neutrality.[21] It is unclear, however, how the mirroring provision will be applied at the end of the plan, when rates are unified. In other words, will the "unified" rates be characterized as reciprocal compensation rates, and thus subject to mirroring, or will GCI be forced to charge Track 1"unified" rates in a Track 2 market? If, moreover, Track 2 reciprocal compensation rates disappear at the end of the plan, GCI may be forced to pay more when it exchanges traffic with the Track 2 ILEC, because GCI only will be able to charge Track 1 unified rates, but the ILEC will be able to charge GCI higher Track 2 unified rates. These discrepancies highlight the fact that the Missoula Plan doesn't actually reform intercarrier compensation. Instead, it simply creates more uncertainty in what is already an overly complicated and unstable regime.

3. Market Disparity.

a) By retaining the distinction between reciprocal compensation and access charges in Track 3 markets, the Missoula Plan discriminates against certain classes of carriers and perpetuates incentives for arbitrage.

Yet another problem with the Missoula Plan is that it preserves the distinction between access charges and reciprocal compensation in rural markets served by Track 3 carriers. The application of different rate levels and structures to traffic that only differs based on its historical regulatory classification is inefficient where the transport and switching functions performed are the same. Indeed, as the Commission recognized, "[t]hese rules apply different cost methodologies to similar services based on traditional regulatory distinctions that may have no bearing on the cost of providing service."[22] But

[21] This concern never disappears in a Track 3 market, where the distinction between reciprocal compensation and access charges is permanent.

[22] *2005 Unified Intercarrier Compensation FNPRM* at 4687. Indeed, the same rationale undermines the distinction between interstate and intrastate access charges, given that

the Missoula Plan perpetuates the distinction between access and non-access traffic by allowing Track 3 carriers to charge IXCs originating access charges.[23] As a result, IXCs are placed a competitive disadvantage relative to other carriers. Wireless carriers, for example, only are required to pay a Track 3 carrier terminating reciprocal compensation for a call that originates and terminates within a single MTA. IXCs, by contrast, pay both originating and terminating access charges for the same call, to the extent that it crosses ILEC local calling area boundaries. Hence, based on the differences between access charge and reciprocal compensation rate structures, the wireless carrier pays the ILEC once, whereas the IXC pays the ILEC twice, even though they are both carrying the same call. This raises the same set of concerns discussed in Section II.B.i., which result from the retention of intrastate access charge rates that are higher than reciprocal compensation rates. The Commission should therefore reject the Missoula Plan on the basis that it retains some form of originating charges for access traffic. True intercarrier compensation reform would eliminate the distinction between access and non-access traffic by abolishing originating charges altogether. Consistent with the reciprocal compensation regime for non-access traffic, IXCs – like LECs, wireless providers, and cable companies – should only pay for the termination of calls.

Moreover, the distinction between access charges and reciprocal compensation perpetuates one of the most significant problems with the existing intercarrier compensation regime: arbitrage. Under the current regime, carriers have an incentive to

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there is no cost difference in originating or terminating an interstate call as opposed to an intrastate call, which require identical network facilities and functions.

[23] GCI acknowledges that the Missoula Plan also allows Track 1 and Track 2 carriers to charge originating rates. These rates, however, are dramatically reduced over time, so they place an IXC at less of a competitive disadvantage relative to other carriers.

strip signaling information from calls in order to prevent intermediate and terminating carriers from billing properly for intercarrier compensation. Given that access charges traditionally have been much higher than reciprocal compensation rates, carriers have every incentive to mask a toll call as a local call to reduce their intercarrier compensation costs. This phenomenon is known as “phantom traffic.”

The Missoula Plan attempts to resolve the problem of phantom traffic by enforcing detailed new rules that: (1) require carriers to deliver accurate signaling information to intermediate and terminating carriers; (2) create a uniform framework for the generation and exchange of call-detail records; and (3) develop an enforcement framework with “serious consequences for carriers that fail to comply with the phantom traffic rules.”[24] GCI, however, is perplexed about the fact that the Missoula Plan seeks to implement these new rules when the easiest solution to the problem of phantom traffic is to immediately eliminate the distinction between reciprocal compensation rates and access charges for all traffic. After all, if there is no difference between the rates for access and non-access traffic, a carrier will have little incentive to strip signaling information from a call in an attempt to reduce its intercarrier compensation costs.[25] It is clear that the phantom traffic provisions only are included in the Missoula Plan to appease rural ILECs, which seek to retain the distinction between access charges and reciprocal compensation based on the fact that access charges historically have been much higher, and thus more lucrative, than reciprocal compensation rates. Access

[24] Missoula Plan at 56.

[25] For the same reason, the Commission should reject the Missoula Plan because it does not eliminate the distinction between interstate and intrastate access charge rates. Just as a carrier has an incentive to mask a toll call as a local call, a carrier also has an incentive to mask an intrastate toll call as an interstate toll call to avoid intrastate access charges which, on average, are much higher than the corresponding interstate rates.

charges, moreover, allow a rural ILEC to charge IXCs an originating rate, whereas reciprocal compensation only allows a rural ILEC to charge a terminating rate.[26] Preservation of rural ILEC revenues is not a sound public policy basis for imposing onerous and expensive new reporting and enforcement measures on *all* carriers, however. Instead, the Commission should eliminate arbitrage opportunities that are embedded in the existing system and perpetuated by the Missoula Plan by implementing true intercarrier compensation reform. True reform would force the Commission to eliminate the distinction between reciprocal compensation and access charges, and require all carriers – including rural carriers – to charge a national, uniform rate to terminate all traffic.[27]

b) By allowing rural ILECs' interstate and intrastate access charges to remain at rates far above the corresponding rates in non-rural markets, the Missoula Plan undermines the federal commitment to rate integration.

The Missoula Plan also allows rural ILECs – or Track 3 ILECs, to be more precise – to maintain intercarrier compensation rates at levels far above the corresponding rates in non-rural, or less rural, markets. For example, under the Missoula Plan, Track 1 carriers are required to eventually reduce their usage-sensitive rates for all terminating

[26] GCI acknowledges that in Track 3 markets, reciprocal compensation rates eventually are allowed to increase to the level of a Track 3 carrier's interstate access charge rates, essentially creating a unified rate for all traffic, at least for the ILEC. This underscores the fact that the phantom traffic provisions in the Missoula Plan are unnecessary. Indeed, GCI questions why it should be forced to implement these onerous new rules when the problem of phantom traffic is likely to disappear by the end of the plan.

[27] GCI is aware that some originating carriers in the lower 48 strip signaling information from a call so the terminating carrier does not know which carrier to bill, particularly when the call is carried through a transiting arrangement. This is not a problem in Alaska, however, where the terminating carrier always bills the carrier that handed it the call, even if the call did not originate on the network of that carrier. Thus, in Alaska, uniform terminating rates would foreclose the problem of phantom traffic.

traffic to $.0005. Track 1 carriers also are forced to reduce their originating rates to no higher than $.0025 for originating tandem switching and common transport and no higher than $.002 for originating end office switching. Track 2 carriers are similarly required to reduce their originating and terminating charges to unified rates, as set forth below:

PRICE-CAP CARRIERS OR CARRIERS ELECTING INCENTIVE REGULATION	
Originating	Terminating
• No higher than $.0075 for tandem switching and common transport • No higher than $.0002 for end office switching	• No higher than $.0075 for tandem switching and common transport plus $.00005 for end office switching, *unless* it elects to reduce its originating rates to zero; then • No higher than $.0097 for tandem switching and common transport plus $.00005 for end office switching.
RATE-OF-RETURN CARRIERS	
Originating	Terminating
• No higher than $.0015 for tandem switching and common transport • No higher than $.002 for end office switching	• No higher than $.0015 for tandem switching and common transport • No higher than $.00005 for end office switching.

Track 3 carriers, by contrast, are allowed to charge intercarrier compensation rates based on their interstate switched access charges. The Missoula Plan reduces a Track 3 carrier's intrastate switched access charges to the level of its corresponding interstate charges. This, of course, assumes that a State does not "opt out" of the Missoula Plan with respect to intrastate access; if it does, it is likely that intrastate access rates will remain at much higher levels. However, if a State does not opt-out, the resulting unified access charge rate level will be used as a cap for the Track 3 carrier's reciprocal compensation rates, but only if those rates would otherwise exceed the Track 3 carrier's interstate access charges. Finally, while the Missoula Plan imposes ceilings on the originating and terminating charges that can be assessed by Track 1 and Track 2 carriers, no such limitation is placed on a Track 3 carrier's interstate access charge rates. Hence, all of a Track 3 carrier's intercarrier compensation rates could increase during the life of the plan.[28] Importantly, under the Missoula Plan, a Track 3 carrier's interstate switched access charges – which effectively place a cap on its intercarrier compensation rates – will remain much higher than the uniform rates that will be charged by Track 1 and Track 2 carriers, as set forth above.

GCI's concern is that by allowing Track 3 carriers to charge significantly higher intercarrier compensation rates than their Track 1 and Track 2 counterparts, the Commission threatens to undermine the long-held federal and Congressional commitments to geographic rate averaging and rate integration, as embodied in Section 254(g) of the Telecommunications Act of 1996 ("the 1996 Act").[29] Section 254(g) provides, in pertinent part,

> Within 6 months after February 8, 1996, the Commission shall adopt rules to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. Such rules shall also require that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State.

The Commission's rules implementing Section 254(g)'s geographic rate averaging and rate integration requirements ensure that carriers offer the same long distance rates and plans to consumers in rural and high cost areas, including non-contiguous States and

[28] This aspect of the Missoula Plan is extremely discriminatory to consumers in Track 3 markets. Since Track 3 carriers' intercarrier compensation rates may not be reduced under the plan, Track 3 carriers may increase their SLCs without even experiencing a corresponding reduction in intercarrier compensation revenues.

[29] 47 U.S.C. § 254(g).

territories, as are offered to urban consumers in the contiguous States.[30] Indeed, the very purpose of geographic rate averaging and rate integration was to give rural consumers and consumers in far-flung states like Alaska access to same types of communications offerings as urban consumers.[31]

The problem with the Missoula Plan is that the costs incurred by carriers that originate and terminate traffic in Track 3 markets will be substantially higher than the costs incurred by carriers generating traffic that originates or terminates in a Track 1 or Track 2 market. GCI, for example, operates primarily in Alaska, which is a State with many Track 3 ILECs and no Track 1 ILECs, so the percentage of calls that GCI terminates with Track 3 carriers will be much greater than the percentage of calls that a

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[30] *Policy and Rules Concerning the Interstate, Interexchange Marketplace***,** 11 FCC Rcd. 9564, 9586 (1996); 47 C.F.R. § 64.1801.

[31] The Commission's commitment to geographic rate integration preceded the enactment of the Telecommunications Act of 1996. As the Commission explained:

> "The Commission has a well-established policy of rate integration. Since 1972, the Commission has required any carrier that provides domestic interstate interexchange service between the contiguous forty-eight states and various offshore points to integrate its rates pursuant to a plan to integrate the carrier's rates and services for offshore points with its rates for similar services on the mainland. In 1976, the Commission required carriers that offered message toll, private line, and specialized services to or from Alaska, Hawaii, Puerto Rico, and the Virgin Islands to integrate their rates for those services into the rate structures and uniform mileage rate patterns applicable to the mainland This policy required IXCs to lower their rates in the newly integrated areas to levels comparable to those prevailing in the mainland for interexchange calls of similar distance, duration, and time of day. We reaffirmed our commitment to rate integration as recently as the AT&T Reclassification Order, stating that: [t]he Commission has long supported the polic[y] of … rate integration between the contiguous forty-eight states and various noncontiguous U.S. regions, including Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands. We remain committed to [that] polic[y]."

Id. Thus, the Missoula Plan, if enacted, would undermine a Commission policy that has successfully delivered the benefits of modern telecommunications to rural and non-contiguous areas for almost 35 years.

nationwide carrier terminates in Track 3 markets.   As a result, GCI faces a Hobson's choice: price its calling plans at rates that reflect the cost of its access charge payments and lose customers, or price plans at rates offered by national providers and lose money on every call.

This conundrum plays out beyond Alaska to any carrier serving predominately rural areas. Under the Missoula Plan, only large, national carriers that terminate a *de minimis* amount of traffic with Track 3 carriers will be able to serve those markets, and even if they do, they may face a substantial competitive penalty when they are undercut in Track 1 and Track 2 markets by competitors only serving the customers of Track 1 and Track 2 carriers. Carriers that might otherwise serve rural areas will not be able to absorb the higher costs associated with serving Track 3 markets, and will be forced to either offer services priced above the nationwide average rates charged by national carriers or not offer connections to customers in Track 3 markets. Neither of these alternatives benefits rural customers. And both of these alternatives undercut Section 254(g).

The Missoula Plan offers two possible solutions to remedy the negative impact on geographic rate averaging and rate integration.

Under the first alternative, which is the alternative favored by the Track 3 carriers, terminating rates for Alaska Track 3 carriers will match those for Track 3 carriers generally, under the terms of the plan. Because Alaska Track 3 carriers participate in the NECA pool, which averages the rates of all pooled Track 3 carriers throughout the United States, the Track 3 carriers assert that their switched access charge rates will be commensurate with the rates charged by Track 3 carriers in the continental United States.

Under the second alternative, which is the alternative favored by GCI, all Track 3 carriers (including those in Alaska) will transition to interstate cost-based rates and interstate rate structures, determined according to existing interstate cost allocation, rate structure, and rate level rules and practices.[32] Beginning at Step 4, the rates for terminating switched access services in Alaska would be further reduced to a level such that termination costs for switched access traffic (both intrastate and interstate) would be equivalent to the transport and termination costs for switched access traffic (both intrastate and interstate) in the remainder of the continental United States. The additional terminating switched access reductions would be recovered from the Restructure Mechanism.

GCI proposes an important amendment to the second alternative, however: this alternative should apply to both originating and terminating access charges assessed by Track 3 carriers in Alaska. Originating access charges place regional carriers, like GCI, at a greater competitive disadvantage relative to large, national long distance carriers than terminating access charges. This is because all of GCI's traffic originates in Alaska, which raises the average level of the originating access charges it pays above that of its competitors. With respect to terminating access charges, by contrast, GCI's traffic terminates in Alaska and the continental United States. Hence, GCI will be able to take advantage of the lower terminating rates charged by Track 1 carriers for at least some of its traffic. The Commission recognized the impact of the access charge regime on IXCs

[32] GCI only favors this alternative if the Commission retains access charges in Track 3 markets. The Commission could wholly resolve any concerns about geographic rate averaging and rate integration by adopting GCI's intercarrier compensation reform proposal, which would transition all intercarrier compensation rates to a national, uniform rate for the termination of all traffic.

serving predominantly rural markets in the *2005 Unified Intercarrier Compensation FNPRM*, wherein it explained that "the rate averaging and rate integration requirements eventually … may place IXCs that serve rural areas at a competitive disadvantage to those that focus on serving urban areas."[33] Indeed, absent some further reform, the Commission predicted that "the competitive realities of the marketplace may drive increasing specialization of companies serving rural as opposed to non-rural areas, ultimately leading to higher costs and fewer competitive choices for rural consumers."[34] This is precisely the outcome that will occur if the Commission does not ensure that both originating and terminating access charges in Alaska are comparable to the corresponding charges in the continental United States.

GCI's proposal sustains geographic rate averaging and rate integration, while the Track 3 carriers' proposal does not. The problem with the Track 3 carriers' proposal is that it does nothing more than perpetuate NECA's interstate access charge rates, which are significantly higher that the unified rates charged by Track 1 and Track 2 carriers under the Missoula Plan.[35] In Alaska, moreover, approximately 70 percent of ILEC access minutes are originated and terminated by ACS – a Track 2 carrier – while the remaining ILEC access minutes are originated and terminated by Track 3 carriers. In other words, all ILEC minutes will still be originated and terminated on the networks of Track 2 and Track 3 carriers, both of which charge higher originating and terminating rates than the Track 1 carriers that originate and terminate the majority of traffic in the

[33] *2005 Unified Intercarrier Compensation FNPRM* at 4725.

[34] *Id.*

[35] Track 3 carriers in Alaska also have historically charged rates in the highest tier of the NECA pool, so there is no assurance that rates will be comparable between Track 3 markets in Alaska and Track 3 markets in the continental United States.

lower 48. Thus, while the Track 3 carriers' proposal might ensure that rates in Track 3 markets will be comparable between Alaska and the rest of the country, the average cost to originate and terminate traffic throughout Alaska will remain much higher. This is because Alaska has no ILEC Track 1 carriers – which charge very low originating and terminating rates – and a much greater percentage of Track 3 carriers – which charge extraordinarily high originating and terminating rates that are preserved by the Missoula Plan.[36] In essence, the Track 3 carriers' proposal does not control for rate differences that are created by the Missoula Plan's reliance on "tracks" and the resulting increase in the average cost to originate and terminate traffic in Alaska, where there are very different percentages of carriers within each track than in the rest of the country.

GCI's proposal, by contrast, relies on differences in the "mix" of traffic between Alaska and the continental United States to achieve lower Track 3 switched access rates. GCI's proposal requires Track 3 carriers to charge rates for both interstate and intrastate switched access traffic that are equivalent to the corresponding rates in the continental United States. Thus, GCI's proposal takes advantage of the fact that most access minutes in the lower 48 are originated and terminated by Track 1 carriers, and under the Missoula

[36] Under the Missoula Plan, GCI is designated a Track 1 carrier and therefore must charge the lower, unified originating and terminating rates mandated for Track 1 carriers. As stated above, however, GCI believes that it violates the principal of competitive neutrality to force a competitor to charge lower access charge rates than the ILECs with which it competes. Thus, to the extent that GCI competes in a Track 2 or a Track 3 market, it should be able to charge Track 2 or Track 3 access charge rates. Of course, raising GCI's originating and terminating rates to the same level as the rates charged by Track 2 and Track 3 ILECs would not eliminate concerns about rate integration, because the average cost to originate and terminate traffic in Alaska would remain higher than the average cost to originate and terminate traffic in the continental United States. The easiest and best solution to the problem of rate integration is to require all carriers to charge a national, uniform rate for the termination of all traffic. This solution would eliminate differences among jurisdictions and promote competitive neutrality.

Plan, Track 1 carriers charge much lower rates than their Track 2 and Track 3 counterparts. The net result is that the average cost to originate and terminate traffic in Alaska will be much more comparable to the cost of originating and terminating traffic elsewhere, because the Track 3 switched access charge rates will be based on the same "mix" of traffic in the rest of the country. Stated simply, GCI's proposal accounts for the fact that Track 3 carriers serve a far smaller share of the market in the lower 48. Accordingly, carriers such as GCI will be able to offer all distance plans at rates that are comparable to the rates charged by carriers in the continental United States. This preserves the geographic rate averaging and rate integration requirements in Section 254(g).

III. INTERCONNECTION

The Missoula Plan dramatically changes the manner in which competitors are required to interconnect with ILECs – and rural ILECs (*i.e.*, Track 2 and Track 3 carriers), in particular – for the exchange of non-access traffic.[37] The current rules governing interconnection between an ILEC and a competitor (*e.g.*, CLEC, wireless carrier, or cable company) are clear and well-established. The Commission's Wireline Competition Bureau summarized these rules in the *Virginia Arbitration Order*.[38] The Bureau stated:

[37] The interconnection obligations imposed on competitors seeking to interconnect with Track 2 and Track 3 carriers are of particular concern to GCI, since there are no Track 1 carriers in Alaska.

[38] *In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(E)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, 17 FCC Rcd. 27039 (2002).

> Under the Commission's rules, competitive LECs may request interconnection at any technically feasible point…. The Commission's rules implementing the reciprocal compensation provisions in section 252(d)(2)(A) prevent any LEC from assessing charges on another telecommunications carrier for telecommunications traffic subject to reciprocal compensation that originates on the LEC's network. Furthermore, under these rules, to the extent an incumbent LEC delivers to the point of interconnection its own originating traffic that is subject to reciprocal compensation, the incumbent LEC is required to bear financial responsibility for that traffic.[39]

The Missoula Plan undercuts these long-standing rules in two primary ways. First, the Missoula Plan allows an ILEC to unilaterally designate the points within each LATA (or, in Alaska, the points within each local calling area) where its competitor is forced to interconnect. To the extent that a competitor chooses a point other than the ILEC's preferred point of interconnection, the Missoula Plan allows the ILEC to impose significant transport charges on the competitor. In essence, the Missoula Plan eliminates a competitor's right to request interconnection at "any technically feasible point" – a right that is conferred by Section 251(c)(2)(B) of the 1996 Act – when the competitor seeks to interconnect with an ILEC.[40] GCI's concern is that the Missoula Plan will enable Alaska ILECs to force GCI to interconnect at previously undeployed access tandems instead of their end offices, which is the point at which GCI has successfully interconnected with ILECs throughout Alaska. If the Alaska ILECs are provided this authority, they could effectively strand GCI's and others' substantial investment in very expensive transport facilities – including earth stations and satellite capacity – and eliminate the competitive transport market that has developed.

[39] *Id*. at 27064.

[40] Even though the Missoula Plan permits competitors to designate points of interconnection, or "edges," it unfairly advantages the ILECs and in particular the rural ILECs whose obligation to build to the competitor's edge is strictly limited under the plan.

Second, the Missoula Plan vastly increases a competitor's transport costs when it seeks interconnection with a rural ILEC. Under the plan, competitors interconnecting with rural ILECs would be required to pay for a percentage of the rural ILEC's transport costs, and in some cases, the plan requires the competitor to bear 100 percent of the transport costs in both directions. This aspect of the Missoula Plan is in direct conflict with the Commission's long-standing rule that imposes a financial obligation on a carrier originating non-access traffic to transport that traffic to the point of interconnection with the terminating carrier. By shifting the rural ILECs' transport costs to their competitors, the Missoula Plan erects barriers to entry that foreclose competition in rural markets.

Most importantly, the Missoula Plan proponents have failed to demonstrate any connection between intercarrier compensation reform and any need for far-reaching changes to interconnection. Instead, their underlying purpose in seeking revisions to the Commission's long-standing interconnection rules is to erect barriers to entry, particularly in rural markets, by raising their competitors' costs.

A. The Missoula Plan Reverses the Interconnection Architecture Envisioned by the 1996 Act, Resulting in a Scheme that Favors the ILECs and Eliminates Competitive Markets.

The Missoula Plan attempts to impose a new network architecture based on the concept of "edges." An edge is a point that the carrier terminating traffic on behalf of another carrier designates to receive originating traffic from that carrier. A carrier must designate one edge in each LATA in which it receives traffic from another carrier, and may designate more than one. Track 1 carriers may designate any access tandem as an edge, but may not designate any end office that subtends its access tandem as an edge. Track 2 and Track 3 carriers may designate both access tandems and end offices, as well as newly defined Points of Presence ("POPs") and trunking media gateways, as edges. The Missoula Plan also includes two options for Alaska, which is the only State without a LATA.

Under the first option, which GCI supports,

> Each carrier must provide at least one Edge in each local calling area in which it exchanges traffic with other carriers. Unless otherwise specified, in Alaska, the term "LATA" shall be deemed throughout this Plan to refer to a local calling area.

The Alaska ILECs proposed a second option, with a significant difference:

> *Until such time as there is a LEC-owned tandem,* each carrier must provide at least one Edge in each local calling area in which it exchanges traffic with other carriers. Unless otherwise specified, in Alaska, *and until such time as there is a LEC-owned tandem,* the term "LATA" shall be deemed throughout this Plan to refer to a local calling area.

The problem with the Alaska ILECs' proposal is that it forces a competitor in Alaska to interconnect at a rural ILEC's access tandem, *despite the fact that there are no access tandems in Alaska.* In other words, while the first option simply maintains the status quo, the second option would import the inefficient and anti-competitive RBOC network architecture from the continental United States to Alaska.

As a threshold matter, it is important for the Commission to understand the differences in network architecture between Alaska and the continental United States. Alaska never was a part of the Bell system, nor did Alaska ever have separate LATAs. Thus, while the ILECs in the lower 48 historically provided services throughout a LATA post-Bell break-up – including intraLATA toll service – ILECs in Alaska provide local service within discrete local calling areas. IXCs, by contrast, provided all transport services between ILEC local calling areas. The resulting market structure in Alaska is therefore more purely competitive than the market structure in the rest of the United

States. In Alaska, IXCs – not the ILECs – provision transport facilities between their POPs and the ILECs' local networks. This differs greatly from the situation in the continental United States, where an IXC must interconnect with an ILEC at the ILEC's tandem and purchase ILEC-provisioned transport, which often is subsidized by pooled access charge rates and universal service, thereby making it more difficult for a competitive market for these services to develop. In Alaska, by contrast, a competitive market for transport and the deployment of extensive network facilities by IXCs has emerged, which differs significantly from RBOC-dominated transport markets in the continental United States.

In 1990, the Alaska legislature passed a bill requiring the Alaska Public Utility Commission (*i.e.*, the predecessor of the Regulatory Commission of Alaska) to establish an access charge system that would facilitate the development of facilities-based intrastate long distance competition. Alaska ILECs immediately saw this as an opportunity to eliminate the competitive transport market that had developed in Alaska by placing these facilities under ILEC control. To be more specific, when the access charge system was being established, the ILECs proposed a tariff provision that would allow them to unilaterally designate the "first point of switching," essentially the point of interconnection. If adopted, this provision would allow the ILECs to install their own access tandems and require IXCs to interconnect at those tandems.[41] An ILEC, for example, could connect all of its remote locations via a tandem in Anchorage and force the IXCs to interconnect in Anchorage. This would have undermined competition in the transport market, because transport between remote locations – which often is provided

[41] One crafty feature of this proposal was to include the distance from ground facilities to the satellite and back in mileage-based rates.

by satellite – would have been usurped by the ILECs. The State commission responded by prohibiting the ILECs from unilaterally forcing interconnection at newly deployed access tandems. According to the Alaska commission, Alaska ILECs cannot install tandems or change the "first point of switching" without the consent of IXCs.[42] And while Alaska ILECs have challenged this provision on several occasions, the RCA has consistently upheld this prohibition.[43]

By proposing the second option, Alaska's ILECs are attempting to make an end-run around the long-standing RCA precedent that prohibits ILECs from forcing interconnection at ILEC-provisioned tandems. In effect, Alaska's ILECs are trying to import the legacy RBOC network to Alaska. The Alaska ILECs, however, have not explained how the Alaska network would benefit from the deployment of tandem switches. Instead, their motivation seems to be a naked desire to eliminate the competitive transport market in Alaska. If, for example, the Commission were to allow the ILECs to force interconnection at the tandem, it would effectively replace unsubsidized competitive interexchange services with subsidized, ILEC-provisioned access services. Pursuant to the Missoula Plan, an ILEC could use universal service

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[42] *In the Matter of the Development of Nonrate Provisions of a Tariff Governing Access Charge Payments by Intrastate Interexchange Carriers to Local Exchange Carriers in Alaska*, Alaska Public Utilities Commission, U-90-26(6) (1990).

[43] *See, e.g., In the Matter of the Formal Complaint Filed by GCI Communication Corp. d/b/a/ General Communication, Inc. and d/b/a GCI Against Telephone Utilities of the Northland, Inc., and PTI Communications of Alaska, Inc.,* Regulatory Commission of Alaska, U-99-81 (1999); *In the Matter of the Tariff Revision, Designated As TA41-999, To Eliminate Customer Consent Regarding the First Point of Switching, Filed by the Alaska Exchange Carriers Association, Inc.,* Regulatory Commission of Alaska, U-00-24(3) (2000); *In the Matter of the Tariff Revision, Designated As TA41-999, To Eliminate Customer Consent Regarding the First Point of Switching, Filed by the Alaska Exchange Carriers Association, Inc.,* Regulatory Commission of Alaska, U-00-24(9) (2002).

support to deploy tandems and the associated transport links. This would limit competition to provide the transport link that has been replaced by tandem service, because the IXC – unlike the ILEC – would not be eligible for a universal service subsidy to provide the same link. In other words, almost any competitor (*i.e.*, CLEC or IXC) would be forced to buy transport from the ILEC rather than deploy its own facilities, because the ILEC's universal service support would provide it with a significant cost advantage.

Indeed, ILEC deployment of access tandems would inflate the size of the USF, because Alaska ILECs would seek support to recover the cost of deploying tandems and transport facilities. At the extreme, rate-of-return carriers could seek to recover the costs of purchasing, launching, and operating their own satellite as part of tandem transport service. Such an outcome would not benefit Alaska consumers, nor would it benefit consumers nationwide, since it would place greater stress on the USF.

The Alaska ILECs' proposal also is not consistent with the Commission's commitment to promoting facilities-based competition, because it actually discourages the deployment of transport facilities by competitive providers. As the Commission explained in the *2005 Unified Intercarrier Compensation FNPRM,*

> any new approach should encourage the efficient use of, and investment in, telecommunications networks, and the development of efficient competition. Indeed, one of the Commission's most important policies is to promote facilities-based competition in the marketplace. An approach that encourages the development of efficient competition is consistent with the goals of the 1996 Act, which was intended to both open markets to competitive entry and promote increased competition in telecommunications markets.[44]

[44] *2005 Unified Intercarrier Compensation NPRM* at 4701.

Importantly, preserving the current regime does not preclude any carrier – including an ILEC – from deploying new transport facilities. Rather, it simply prevents the Alaska ILECs from rendering existing providers' transport services obsolete by forcing them to use the ILECs' networks or by subsidizing the ILECs' entry through universal service support and pooled access charges.[45]

Nor does the Alaska ILECs' proposal promote "efficient competition." To the contrary, the proposal enables Alaska ILECs to deploy tandem switches throughout Alaska, despite the fact that the ILECs have not provided any economic or technical justification for the deployment of these facilities. By contrast, GCI's preference – which is to interconnect at the ILEC end office – actually promotes network efficiency, to the benefit of the ILEC, because it reduces the ILEC's own transport costs.[46] Under the existing interconnection regime, an ILEC has a financial obligation to transport traffic

[45] Today, long haul transport within Alaska is a competitive service provided by facilities-based IXCs without subsidy. Alaska ILECs, however, would destroy this competitive market by forcing other carriers and their customers subsidize their provision of this service via NECA tariff pooling. If the Alaska ILECs deployed the necessary satellite and ground facilities to provide this service, they would reclassify it as access transport and dump those costs into the NECA pooling process. The result would be higher rates to all carrier customers in the affected tier and destruction of the competitive transport market because non-subsidized IXCs will not be able to compete against pooled rates.

[46] This result is consistent with the Commission's fairly recent decision to eliminate its previous policy to prohibit duplicative earth station facilities. *See Policy for Licensing Domestic Satellite Earth Stations in the Bush Communities of Alaska, Report and Order*, 18 FCC Rcd. 16874 (2003). In discontinuing the Alaska Bush Policy, the Commission "eliminate[ed] a long-standing exception to [its] general policy favoring open entry for facilities-based competition in the provision of interstate MTS telecommunications services" and expected "that allowing facilities-based competition of interstate MTS in Alaska Bush communities will encourage improvement in the quality of service available in those communities, promote more efficient delivery of service, and reduce incentives for overcharging for use of these facilities." *Id.*

that originates on its network to an interconnection point with the terminating carrier.[47] To the extent that the interconnection point is at the access tandem, and not the end office, the ILEC incurs greater transport costs to carry originating traffic. Of course, under the Missoula Plan, an Alaska ILEC could recover its transport costs from universal service, or it could shift some of those costs to its competitors. Nonetheless, the Alaska ILECs' willingness to potentially incur greater transport costs demonstrates that their tandem-based interconnection proposal is not designed to increase network efficiency; rather, the goal is to monopolize competitive markets.

Beyond the significant, anticompetitive impact that the Alaska ILECs' proposal would have on Alaska's market structure, it also is wholly inconsistent with the 1996 Act and the Commission's interconnection rules. As the Commission explained in the *Texas 271 Order*,

> Section 251, and our implementing rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point…. The incumbent LEC is relieved of its obligation to provide interconnection at a particular point in its network only if it proves to the state public utility commission that interconnection at that point is technically infeasible Thus, new entrants may select the "most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination. Indeed, section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point in the network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points.[48]

[47] *Virginia Arbitration Order* at n.187, *citing* 47 C.F.R. § 51.709(b).

[48] *In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. D/B/A Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas,* 15 FCC Rcd. 18354, 18390 (2000) ("*Texas 271 Order*").

The Missoula Plan is in direct conflict with these long-standing requirements because it effectively forces competitors to interconnect at ILEC-designated interconnection points, not the most efficient interconnection points from the competitor's perspective. To the extent that a competitor does not choose to interconnect at the ILEC's designated point, the ILEC can force the competitor to incur significant transport charges to reach that point, so the competitor, in effect, has no choice at all. In Alaska, for example, GCI's LEC operation has expended significant time and resources interconnecting with the ILECs at their end offices.[49] Under the Missoula Plan, however, the ILECs could force GCI to reengineer its network to interconnect with an ILEC at a newly deployed tandem.[50] There is no legal basis for such a dramatic change in network architecture. GCI has an absolute right under Section 251(c)(2)(B) to "interconnect at any technically

[49] Under the Commission's existing rules, a competitor has the option to interconnect at only one technically feasible point in each LATA. *See id*. In Alaska, the single point of interconnection rule has been used to thwart GCI's efforts to interconnect at ILEC end offices. ILECs in Alaska have tried to use the rule force GCI to interconnect at a single point within the State when GCI has sought interconnection at multiple points on an ILEC's network. Hence, while GCI supports the efforts of competitors to preserve the single point per LATA rule, the Commission could inadvertently harm GCI if does not reiterate that the single point must be the minimum point of interconnection, from the competitor's perspective. *Texas 271 Order* at 18390. This is wholly consistent with Section 251(c)(2)(B), which allows interconnection at any technically feasible point, and Commission precedent, which allows interconnection where it is most efficient, from the competitor's perspective. *Id.* Interconnection at multiple end office satisfies both these requirements, particularly given that it actually reduces the ILEC's transport costs. In short, to the extent that the Commission retains the single point per LATA rule, it should clarify that this is not the maximum point of interconnection between ILECs and competitors. To the contrary, the rule should establish the floor, not the ceiling.

[50] From GCI's perspective, it is absolutely critical that the Commission reject rules that would force GCI to interconnect at access tandems, because doing so will strand GCI's substantial investment in interconnection facilities and undermine the competitive transport market in Alaska. GCI acknowledges, however, that competitors operating in the continental United States often prefer to interconnect at an ILEC tandem rather than an ILEC end office. GCI believes that it is fully consistent with the statute to provide a competitor with the right to interconnect at either point, to the extent that it is technically feasible.

feasible point within the [ILEC's] network." The ILECs have not – and cannot – demonstrate that interconnection at the end office is not technically feasible given that GCI has successfully interconnected at end offices throughout Alaska with no harm to the ILECs. Indeed, the Commission's own rules acknowledge this fact, in that they require an ILEC to provide interconnection "at any technically feasible point within the incumbent LEC's network including, at a minimum: (i) The line-side of a local switch; and (ii) The trunk-side of a local switch…."[51] Thus, unilaterally forcing GCI to interconnect at a new, ILEC-designated point such as an access tandem – without demonstrating that interconnection at the end office is not technically feasible– violates both the statute and the Commission's implementing rules.

B. The Missoula Plan's Transport Rules Disproportionately Favor Rural ILECs by Shifting Their Costs to Competitors.

The Missoula Plan also imposes a new set of rules regarding interconnection transport charges. Under the Commission's existing rules, "transport" is defined as "transmission and any necessary tandem switching . . . from the interconnection point between the two carriers to the terminating carrier's end office switch" (or equivalent) that serves the called party."[52] Moreover, each carrier is financially responsible for the transport required to take its originating traffic to a point (usually, a switch) on the terminating carrier's network.

The Wireline Competition Bureau has defined the originating transport duty as follows:

[51] 47 C.F.R. § 51.305(a)(2).

[52] 47 C.F.R. § 51.701(c).

> [A]ll LECs are obligated to bear the cost of delivering traffic originating on their networks to interconnecting LECs' networks for termination.[53]

> This precept stems from rules 51.703(b) and 51.709(b), which on the one hand preclude all LECs from charging other carriers for local traffic that the LEC originates, 47 CFR § 51.703(b), and on the other hand permit carriers providing transmission facilities between two networks to recover from the interconnecting carrier "only the costs of the proportion of that trunk capacity used by [the] interconnecting carrier to send traffic that will *terminate* on the providing carrier's network."[54]

In essence, under the current rules, each party is financially responsible for the interconnection trunks that carry its originating traffic to the other party's switch.

The Missoula Plan redefines "transport" as the "transmission facilities a carrier requires to physically interconnect its network with the terminating carrier's Edge."[55] But this rule does not apply to Track 2 and Track 3 carriers. Instead, the Plan contains two sets of special transport rules designed specifically to benefit rural ILECs: the "Modified Rural Transport Rule" and the "Full Rural Transport Rule."

Under the "Modified Rural Transport Rule," any competitor that interconnects with a Track 2 or Track 3 carrier must pay: (1) to transport its originating traffic to the rural ILEC's edge; and (2) to transport the rural ILEC's originating and terminating traffic between the competitor's edge and a "meet point" within each rural ILEC's exchange. A "meet point" is defined as "an existing meet point interconnection arrangement located on [a rural ILEC's] interoffice facilities at or near the boundary of each exchange." When the competitor provides dedicated transport to the meet point (in lieu of indirect interconnection), the rural ILEC only is required to pay for 50 percent of

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[53] *Virginia Arbitration Order* at 27074.

[54] *Id.* at n.187, *citing* 47 C.F.R. § 51.709(b).

[55] Missoula Plan at 31.

the capacity required to transport its traffic from the meet point to the competitor's edge – but only for the first 10 miles of transport capacity.

Under the Full Rural Transport Rule, which only is available to Track 2 carriers that elect "incentive regulation," the Track 2 carrier is not responsible for any portion of the transport between its meet point and a competitor's edge. Instead, the competitor is responsible for the transport of all traffic in both directions.

Both the Modified Rural Transport Rule and the Full Rural Transport Rule disproportionately benefit Track 2 and Track 3 carriers. If enacted, these provisions would effectively force a competitor to subsidize a significant percentage of the rural ILECs' transport costs, and in the case of the Full Rural Transport Rule, the competitor would be forced to bear 100 percent of a rural ILEC's transport costs in both directions. Under either provision, a rural ILEC only is obligated to carry its originating traffic to the meet point, not the competitor's edge. This, on its face, is unfair, because the competitor has to carry its traffic to the rural ILEC's edge. Hence, if a competitor interconnects with a rural ILEC outside the rural ILEC's calling area, the competitor must pay to terminate all of its traffic at the rural ILEC's edge, *plus* the competitor will be responsible for transporting all of the rural ILEC's traffic (both originating and terminating) between the meet point and its own edge.[56]

GCI is particularly troubled by the possible combination of Missoula Plan's new transport provisions with the network architecture changes sought by the Alaska ILECs. As stated in the prior section, it is GCI's preference to interconnect at ILEC end offices, which places GCI's "edge" in the ILEC's local calling area. This maintains the current

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[56] The competitor's transport costs will depend on whether the rural ILEC elects the Modified Rural Transport Rule or the Full Rural Transport Rule.

regime, in which a rural ILEC that originates traffic has a financial obligation to transport that traffic to a point of interconnection with the terminating carrier. But the Alaska ILECs' proposal, if enacted, would force GCI to interconnect at access tandems outside the ILECs' local calling areas. As a result, GCI would be forced to pay for the entire cost to transport its originating traffic to a rural ILEC's edge, *plus 50 percent of the cost to transport the rural ILEC's traffic to GCI's edge*. The net effect is that GCI is forced to subsidize rural ILEC transport costs, which could be quite substantial. For example, depending on where an ILEC's access tandem is located, the transport links between the tandem and the ILEC's local calling area could be provided, in part, through a satellite.

More importantly, however, the Missoula Plan's transport regime is directly contrary to "[t]he Commission's rules implementing the reciprocal compensation provisions in section 252(d)(2)(A)," which hold that "to the extent an incumbent LEC delivers to the point of interconnection its own originating traffic that is subject to reciprocal compensation, the incumbent LEC is required to bear financial responsibility for that traffic."[57] GCI sees no need to undermine the existing regime, because it forces both a rural ILEC and a competitor to pay a fair share of their respective cost to originate calls. Under the regime proposed by Missoula Plan, by contrast, a competitor is placed at a significant disadvantage. Because the rural ILEC's transport costs are subsidized, it can offer its customers lower retail rates than its competitor. Indeed, under the Missoula Plan, to the extent that a rural ILEC does not lower its retail rates, it actually recovers its transport costs twice: once from its customers and once from its competitor. The competitor, by contrast, will see its transport costs increase, which may render its service

[57] *Virginia Arbitration Order* at 27064.

too expensive to be competitive in the marketplace. The net effect is that the Missoula Plan's transport provisions, if enacted, would erect significant barriers to entry in rural markets.[58]

C. The Commission Should Not Rewrite its Interconnection Rules.

The Missoula Plan proponents have not shown any link between intercarrier compensation reform and the Commission's interconnection rules. The proposed dismantling of the current interconnection regime is wholly unnecessary and unrelated to steps necessary to implement intercarrier compensation reform.

As a threshold matter, the Missoula Plan guarantees revenue neutrality for all ILECs. In other words, there is no economic impact on an ILEC when it reduces its terminating rates for non-access traffic, because it retains the same level of revenue that it once received from interstate access, intrastate access, and reciprocal compensation through a combination of increased subscriber line charges ("SLCs") and distributions from the new Restructure Mechanism. Thus, while Track 1 and Track 2 rate-of-return carriers may see their rates for the termination of non-access traffic decline, the Missoula Plan will not affect their overall revenues. And if the Track 1 and Track 2 RoR carriers'

[58] GCI suspects that the rural ILECs sought this overhaul of the Commission's transport rules based on disputes over transiting service with the RBOCs in the lower 48. To be more specific, rural ILECs often send originating traffic that will terminate with non-ILEC carriers through RBOC transiting arrangements, because they lack direct interconnection arrangements with competitive carriers (*i.e.*, CLECs, wireless carriers, cable companies). The RBOCs historically provided the rural ILECs with preferential rates for transiting service. Recently, however, the RBOCs have sought to increase the transiting rates paid by rural ILECs. Rather than attempting to negotiate a reasonable arrangement with the RBOCs, the rural ILECs saw the Missoula Plan as an opportunity to protect themselves from increased transport costs by shifting these costs to competitive carriers. GCI believes that it is particularly inappropriate to allow a dispute between the RBOCs and the rural ILECs in the lower 48 change the interconnection rules in Alaska given that: (1) Alaska has no RBOCs; and (2) Alaska has no tandem transit arrangements.

revenues stay the same, there is no justification for reducing their interconnection costs by shifting those costs to competitors. Moreover, under the plan, Track 3 carriers' reciprocal compensation rates will be permitted to *increase* to the level of their interstate access charges. If Track 3 carriers are permitted to recover more revenue for non-access traffic through increased reciprocal compensation rates, there should be no corresponding need to reduce their interconnection and transport costs. This difference in treatment between ILECs and competitors is particularly unjustified and anti-competitive because a competitor – unlike an ILEC – is not guaranteed revenue neutrality.

The Missoula Plan also caps a non-ILEC's rate to terminate non-access traffic at the rate of the ILEC in whose market it competes. To the extent that an ILEC's rates are reduced under the Missoula Plan, a non-ILEC will see a corresponding reduction in its rates. It therefore simply makes no sense to provide the ILEC with preferential interconnection obligations, when both carriers are performing the same function, within the same market, at the same rate. Further, given that both carriers will charge the same rate to terminate non-access traffic, it makes even less sense to force the competitor to subsidize the ILEC's transport costs in Track 2 and Track 3 markets. After all, a reduction in reciprocal compensation rates – which are paid to *terminate* non-access traffic on the network of another carrier – will have no impact on a rural ILEC's costs to *originate* traffic on its own network or its ability to recover these costs from its own customers. Yet under the Missoula Plan, competitors are forced to pay for the transport facilities used to carry the rural ILEC's originating traffic.

In short, the Missoula Plan does not maintain the status quo for ILEC revenues. To the contrary, through the combination of revenue neutrality, preferential interconnection policies, and transport subsidies, the ILECs are made better off than they are today: not only are they guaranteed their existing intercarrier compensation revenues, they get to reduce their interconnection and transport costs by shifting those costs to competitors.

Further, the Missoula Plan is inherently arbitrary, because it only applies the revised interconnection rules to non-access traffic, while access traffic continues to be subject to interconnection requirements that are contained in LEC tariffs. As a result, even as termination rates for access and non-access traffic are unified in some markets, terminating carriers may still be able to require different types of traffic to be delivered across different facilities (*i.e.,* separate trunks for access and non-access traffic). This distinction also places IXCs at a significant disadvantage relative to other carriers. IXCs, for example, pay for entrance facilities that transport both originating traffic from the LEC POP to the IXC POP and terminating traffic from the IXC POP to the LEC POP. If that architecture were synchronized with the existing non-access architecture, the IXC would continue to pay for the facilities to terminate traffic to the LEC, but the *LEC* would pay for the facilities to carry originating traffic from the LEC to the IXC. The Missoula Plan's non-uniform application of the interconnection rules underscores that the proposed rules are not about the steps necessary to implement intercarrier compensation reform, but instead are being used to further foreclose competitive network options by protecting the ILECs.

Changing the Commission's interconnection rules for non-access traffic not only is unnecessary and anti-competitive, it also will create substantial upheaval in telecommunications markets. Under the Missoula Plan, either party to an interconnection agreement may unilaterally demand a total overhaul of their existing interconnection arrangement.[59] Importantly, this provision differs dramatically from some of the intercarrier compensation provisions of the plan, which only allow carriers to change rates upon the expiration of a current interconnection agreement.[60] By contrast, forcing a competitor to completely reconstruct its interconnection facilities based solely upon the whim of an ILEC introduces substantial uncertainty into that competitor's business plan, because it requires the competitor to obtain the funding needed to invest in additional collocation space and transport facilities. It also interferes with the competitor's provision of service to its customers. Finally, to the extent that the Alaska ILECs are permitted to unilaterally designate a tandem as an edge, it will strand GCI's substantial investment in transport facilities, including earth stations and satellite capacity. This undermines the Commission's commitment to facilities-based competition by stranding GCI's $170 million investment in facilities.

At bottom, the Missoula Plan proponents have not shown any need to revise the Commission's long-standing interconnection rules to effectuate intercarrier compensation reform. Instead, the new interconnection obligations proposed by the Missoula Plan proponents have one goal: to erect barriers to entry, particularly in rural markets, by shifting the ILECs' interconnection and transport costs to competitive carriers.

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[59] Even if both carriers opt to keep the current arrangement, however, competitive carriers are penalized. As discussed above, to the extent that a competitor maintains its existing point(s) of interconnection with the ILEC, it would still be forced to incur new transport costs that were neither agreed to nor anticipated when interconnection was established.

[60] *See* Missoula Plan at 18-19 (discussing the reciprocal compensation rate changes that will take effect when an interconnection agreement with a Track 3 carrier expires).

IV. UNIVERSAL SERVICE

A. By Maintaining ILEC Revenue Neutrality, the Missoula Plan Violates the Principle of Competitive Neutrality and, as a Consequence, Undermines Universal Service.

1. The Restructure Mechanism is illegal because it compensates ILECs, but not other carriers, for lost intercarrier compensation revenues.

Under the Missoula Plan, the new Restructure Mechanism compensates ILECs for reductions in their revenues from interstate access, intrastate access, and reciprocal compensation, to the extent that such revenues are not recovered from restructured intercarrier charges or increased SLCs. The Restructure Mechanism will be funded through contributions from the customers of other telecommunications carriers, such as CLECs, wireless carriers, and cable providers. According to the Missoula Plan, however, "Restructure Mechanism dollars will be available to other carriers" – besides the ILECs – "in circumstances to be determined in the future."[61] In other words, the Missoula Plan does not ensure that Restructure Mechanism funds will be available to other telecommunications carriers that offer competing services, including facilities-based CLECs like GCI that also will face reductions in their intercarrier compensation revenues if the Missoula Plan is enacted. More troubling still is the fact that while the Restructure Mechanism is characterized as a universal service mechanism, it is not portable, in violation of the Commission's long-standing commitment to USF portability. As discussed herein, GCI is opposed to ILEC revenue guarantees because they protect ILECs from the forces of competition and perpetuate their over-reliance on USF.[62]

[61] Missoula Plan at 74.

[62] GCI is opposed to both the Restructure Mechanism and increased SLCs, to the extent that they preserve ILEC over-earnings through a policy of revenue neutrality. But SLC

However, to the extent that the Commission eventually undertakes true intercarrier compensation reform, and adopts a transitional version of the Restructure Mechanism to prevent rate shock, any such mechanism must be portable among all ETCs.

As a threshold matter, it is important to identify the appropriate legal basis for the Restructure Mechanism, which is notably missing from the Missoula Plan. GCI expects that the rural ILEC supporters of the Missoula Plan will argue that it is an access charge replacement mechanism subject to the requirements of Sections 201 and 205[63]. In reality, however, the only authority for collecting contributions for the establishment of the Restructure Mechanism is Section 254(d) of the 1996 Act, which provides that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and non-discriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."[64] In other words, if the Restructure Mechanism is purely an access charge mechanism independent of universal service, then there is no lawful mechanism for collecting revenues from telecommunications carriers to fund it. The rural ILECs have

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increases, unlike the Restructure Mechanism, do not violate the principal of competitive neutrality. SLCs, unlike the Restructure Mechanism, do not erect barriers to entry. Because SLCs are recovered from the ILEC's own end user customers, the SLC does not provide a subsidy solely to the ILEC. To the contrary, a CLEC such as GCI can charge its own customers a retail rate that is comparable to the ILEC's retail rate plus the SLC. Hence, the ILEC has no inherent cost advantage. More importantly, however, a CLEC can enter a market and undercut an ILEC's retail rates –including the SLC – to the extent that the CLEC is more efficient. This is exactly what happened in Alaska, where GCI maintained its own retail rates when ACS raised retail rates in Anchorage. Thus, SLC increases – unlike the Restructure Mechanism – are not permanent, and will be eroded over time through the development of competition.

[63] 47 U.S.C. §§ 201, 205.

[64] 47 U.S.C. § 254(d).

not, and cannot, identify any such authority under Sections 201 and 205. So it necessarily must be analyzed for compliance with Section 254.

As a universal service mechanism subject to Section 254, the Restructure Mechanism must be portable among all ETCs. In the *Universal Service First Report and Order*, the Commission established the principle of portability, holding that "[a] competitive carrier that has been designated as an eligible telecommunications carrier shall receive universal service support to the extent that it captures subscribers' lines formerly served by an ILEC receiving support or new customer lines in that ILEC's study area."[65] In the case where the competitor captures a line, it receives the same level of universal service support as the ILEC.[66] In enacting this portability requirement, the Commission "conclude[d] that paying the support to a competitive eligible telecommunications carrier that wins the customer or adds a new subscriber would aid the entry of competition in rural study areas," since it would not subsidize one provider (*i.e.*, the ILEC) to the detriment of all others. Portability was subsequently upheld by the Fifth Circuit Court of Appeals, which rejected the rural ILECs' argument that portability violated Section 254(e)'s command to provide "sufficient" universal service support:

> The purpose of universal service is to benefit the customer, not the carrier. "Sufficient" funding of the customer's right to adequate telephone service can be achieved regardless of which carrier ultimately receives the subsidy….. What petitioners seek is not merely predictable funding mechanisms, but predictable market outcomes. Indeed, what they wish is protection from competition, the very antithesis of the Act.

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[65] *In the Matter of Federal-State Joint Board on Universal Service,* First Report and Order, 12 FCC Rcd. 8776, 8932 (1997).

[66] *Id.*

> [P]ortability is not only consistent with predictability, but also is dictated by principles of competitive neutrality and the statutory command that universal service support be spent "only for the provision, maintenance, and upgrading of facilities and services for which the [universal service] support is intended."[67]

Moreover, any version of the Restructure Mechanism should be truly portable. For example, when a rate-of-return carrier loses a line, it should lose Restructure Mechanism support associated with that line. Under the Missoula Plan, however, rate-of-return carriers (but not price cap carriers) retain Restructure Mechanism support even when they lose a line to a competitor. This, in turn, results in the duplication of support, which places additional stress on the USF. It also is not competitively neutral, because while the competitor only receives support when it actually serves customers, the rate-of-return carrier receives support for sitting idle.

2. Revenue neutrality violates the principle of competitive neutrality, which blunts the ILECs' incentives to reduce costs and increase efficiency by protecting them from the forces of competition.

ILEC revenue neutrality violates the Commission's long-held commitment to competitive neutrality. ILECs are increasingly losing intercarrier compensation revenues – including revenues from reciprocal compensation, intrastate access, and interstate access – as traffic migrates off their networks and onto the networks of other providers, such as CLECs, cable companies, and wireless providers. Both the nation's largest ILECs and the smaller, more rural ILECs participating in the NECA Pool have seen a downward trend in their access minutes since 2000.[68] But the Missoula Plan, in effect,

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[67] *Alenco Communications, Inc. v. FCC,* 201 F.3d 608, 621 (5th Cir. 2000).

[68] *See, e.g.,* Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service,* 10-4 (2005) (Telephone Calls and Billed Access Minutes of Large ILECs Reporting to the Commission); *Id.* at 10-3 (Interstate Switched Access Minutes (In Billions)); Federal-

ensures that ILECs enjoy a federally guaranteed 11.25 percent rate of return on their *existing* levels of traffic, despite the fact that these levels should decline further over time.[69] Moreover, the Missoula Plan is not a transitional mechanism, so the ILEC revenue guarantees contained therein continue in perpetuity. In essence, the ILECs are awarded a permanent federal subsidy for no reason other than the fact that they are the incumbent providers in the market.

The problem with this subsidy scheme is that it insulates ILECs from the full forces of competition. In an unsubsidized market, the ILEC loses all the revenue associated with traffic that once flowed across its network when that traffic moves off its network and is carried by a different provider. Under the Missoula Plan, by contrast, the ILEC retains the revenue associated with that traffic because the Restructure Mechanism maintains the ILECs' revenue levels, even when they no longer have the traffic to justify those revenue levels. In other words, while other carriers only receive intercarrier compensation revenue when they carry traffic, the ILECs are rewarded for sitting idle.

This aspect of the Missoula Plan undermines the development of competition in three ways.

First, non-ILECs effectively receive less intercarrier compensation than the ILEC, because the ILEC retains compensation based on its existing level of intercarrier

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State Joint Board on Universal Service, *Universal Service Monitoring Report*, 8-3 (December 2005) (Interstate Switched Access Minutes of Use, Incumbent Local Exchange Carriers).

[69] Of course, in Track 3 markets, the Missoula Plan goes beyond merely maintaining ILEC revenue neutrality. In these markets, Track 3 carriers may simultaneously increase their intercarrier compensation rates and increase their SLCs. Thanks to the Missoula Plan, Track 3 carriers actually have the ability to capture additional revenues, all at the expense of consumers, who are likely to see their rates for local and long distance services increase.

compensation revenues. This, in turn, provides the ILEC with a significant cost advantage over the non-ILEC, since it is being reimbursed consistent with the revenue generated by its prior rates and traffic levels while the non-ILEC only receives revenue based on the Missoula Plan's reduced rates. It is very difficult for a competitor to enter a market where the incumbent provider has a permanent, government-guaranteed cost advantage. It also undercuts the ability of the competitor to ever compete with the ILEC on price. The Commission previously recognized the competitive inequities and market distortions created by providing ILECs with intrastate universal service support that is not available to new entrants. As the Commission concluded:

> A new entrant faces a substantial barrier to entry if its main competitor is receiving substantial support from the state government that is not available to the new entrant. A mechanism that makes only ILECs eligible for explicit support would effectively lower the price of ILEC-provided service relative to competitor-provided service by an amount equivalent to the amount of support provided to ILECs that was not available to their competitors. Thus, non-ILECs would be left with two choices – match the ILEC's price charged to the customer, even if it means serving the customer at a loss, or offer the service to the customer at a less attractive price based on the unsubsidized cost of providing such service. A mechanism that provides support to ILECs while denying funds to eligible prospective competitors thus may give customers a strong incentive to choose service from ILECs rather than competitors.[70]

The Commission hit the nail on the head. An unequal subsidy cannot be competitively neutral and will skew the market in favor of one competitor – the ILEC. By contrast, giving all providers access to the same revenues neutralizes the market-distorting effects of the relevant subsidy, allowing the universal service program to harness the economic benefits of competition.

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[70] *In the Matter of Western Wireless Corporation Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934,* Memorandum and Order, 15 FCC Rcd. 16227, 16231 (2000).

Second, under the Missoula Plan, ILEC intercarrier compensation revenues do not decline as an ILEC loses traffic. Price cap ILECs receive Restructure Mechanism support on an average, per-line basis. Support is calculated based on the price cap ILEC's current intercarrier compensation revenues, which are generated by the ILEC's pre-Missoula Plan rates and traffic. Thus, while the price cap ILEC loses Restructure Mechanism support when it loses a line, the support for the lines it retains is based on its traffic prior to the enactment of the Missoula Plan. Hence, to the extent that the ILEC's traffic actually declines – which is consistent with industry trends – it still gets paid for traffic that it no longer carries.

Moreover, providing Restructure Mechanism support on an average, per-line basis is wholly inconsistent with the manner in which intercarrier compensation revenue is generated. Intercarrier compensation revenue is based on minutes of use. An ILEC, for example, could lose a large business customer that generates many minutes of both originating and terminating traffic. Because the Restructure Mechanism delivers support on an average, per-line basis, however, the per-line support amount for the ILEC's remaining customers would be too high, since it would not reflect the actual decline in the ILEC's traffic and its corresponding revenues. The Restructure Mechanism for rate-of-return ILECs is even worse. Under the Missoula Plan, Restructure Mechanism support is provided on a lump-sum basis. As such, rate-of-return carriers retain all of their Restructure Mechanism support, even when they lose a line to a competitor.

The net result of this policy is that an ILEC does not face the same financial incentive to retain customers that it faces in a truly competitive market. In fact, under the Missoula Plan, an ILEC has even less of an incentive to reduce rates or increase service quality to keep end user customers – and the access and non-access traffic they send and, more importantly, receive – on its network, since it always retains the same level of intercarrier compensation revenues through the Restructure Mechanism. Such a system of disparate support – which compensates ILECs for traffic they no longer carry – undermines the benefits of a competitive market, which ensures that all competitors have incentives to deliver the highest value to customers at the lowest price in order to keep those customers on their networks.

Finally, the Restructure Mechanism preserves revenue neutrality for one group of carriers – the ILECs – but no others. CLECs and cable companies such as GCI – which are grouped into Track 1 – will face the most significant reductions in their intercarrier compensation rates under the Missoula Plan. It violates the principle of competitive neutrality to make these carriers contribute to a new universal service mechanism that only benefits the ILECs, without enabling them to recover their own lost intercarrier compensation revenues through the same mechanism. In effect, the ILECs are subsidized by the customers of all other carriers (e.g., CLEC, wireless, cable), by forcing those carriers to charge their customers more so the ILECs can charge their customers less. The fact that the Restructure Mechanism is not available to any carrier besides the ILECs reveals the real purpose behind the Missoula Plan – preservation of declining ILEC revenue streams.

ILEC revenue guarantees – standing by themselves – are not competitively neutral. While GCI understands that the Commission might not want to mandate a flash-cut to ILEC intercarrier compensation revenues, because it could result in retail rate shock, any mechanism that preserves those revenues must be transitional, not permanent.

GCI's fundamental concern about the Missoula Plan, however, is that in addition to permanently maintaining ILEC revenue streams, it also erects new barriers to competitive entry, particularly in rural markets. These barriers are created by the intercarrier compensation provisions of the plan – which perpetuate, and worsen, the inefficiencies and unfairness of the current regime to the advantage of rural ILECs – and the new interconnection provisions – which foreclose the development of competition in rural markets by raising competitors' interconnection and transport costs. The problem with this combination of policies is that it effectively preserves the ILECs' existing level of universal service support in perpetuity, which maintains, rather than reduces, the current strain on the USF. In a market where competition is permitted to flourish, a competitor will compete with the ILEC on price by reducing its costs and becoming more efficient. The ILEC will be forced to respond in kind. This, in turn, will reduce the ILEC's reliance on the USF to the extent that it is forced provide the supported services at a lower total cost. The Missoula Plan, by contrast, erects barriers to entry that foreclose the cost reductions that can and should result from the advent of competition.

The ultimate result is that consumers in the subsidized market – which is, most often, a rural market – do not receive the benefits of competition, such as new services, improved service quality, and lower prices. Likewise, consumers throughout the country are forced to contribute more than is truly necessary to fund universal service.

3. The Missoula Plan undermines the competitive process, which is the best means to deliver universal service at the minimum cost to all consumers.

GCI believes that competition is the best means to deliver universal service broadly, and at the lowest possible cost, to all consumers. Any policy that undermines competition is therefore harmful to universal service. Take, for example, GCI's experience in Alaska. GCI competes head-to-head with the ILEC – ACS – in Anchorage, Fairbanks, and Juneau, providing service at the same or better service quality. Rather than offering a limited number of products that merely complement ACS's services (*e.g.*, wireless service or high-speed Internet access), GCI provides a full range of services – including long distance and local telephone service, fixed line and wireless telephone service, and Internet access at a variety of speeds – that fulfill its customers' telecommunications needs. GCI's entry thus provides consumers with the type of choice envisioned by the 1996 Act, and has delivered lower prices, better service packages, and advanced services to both rural and non-rural markets.

Since 1997, when GCI entered the competitive local exchange business in Anchorage (Alaska's only "non-rural" market), consumers in Anchorage have saved tens of millions of dollars as result of reduced local rates. In November 2001, when ACS persuaded the RCA to grant it both a retail rate and UNE price increase in Anchorage, GCI held the line and did not increase its retail rates. Consumers, in turn, voted with their pocketbooks, showing overwhelming support for competition: GCI now serves close to 50 percent of Anchorage residential and business customers.

GCI designed and offered packages and services that were not previously available to consumers. For example, upon entry, GCI offered a Value Package for residential customers in Anchorage, saving them more than 40 percent compared to the incumbent's rates for basic local service and the most frequently used calling features (Caller ID and Call Waiting). GCI also made offerings including features that ACS (and its predecessor ATU) had, but did not actively market, including Selective Call

Forwarding, Selective Call Acceptance, Selective Call Rejection, and Selective Distinct Alert.

Business customers also benefited from these services and other innovations. For example, GCI introduced digital projects such as Flexible Digital Subscriber Services. This service allowed business customers to order fractional T1 service, permitting the customer to increase or decrease the number of channels to respond to seasonal traffic demand without any additional charge twice a year. GCI also offered a new product called Fast Track Primary Rate ISDN, an affordable and scalable ISDN product for small businesses.

In Fairbanks, the second largest city in Alaska, and Juneau, the state capitol, GCI's competitive entry also has generated significant customer benefits. Today, GCI has earned more than 30 percent of the Fairbanks and Juneau markets. Importantly, even those customers who remain with ACS have benefited, because competitive pressure forces ACS to meet GCI's competitive offerings. Notably, in geographic areas where GCI does not compete with ACS, ACS has not made similar efforts – failing, for example, to offer the same types of bundled services that it makes available in Anchorage.[71]

The impending threat of GCI's market entry is having similar effects even in more remote areas where GCI has just been authorized to provide service. In Nome, for example, GCI recently acquired existing cable plant and began offering high-speed Internet access through cable modems. In response, the Arctic Slope Telephone Association Cooperative began offering its own high-speed Internet service. The

[71] *See* Exhibit 1 (showing ACS bundle activity in areas with and without GCI competition).

Matanuska Telephone Association and the Ketchikan Public Utility have likewise responded to GCI's anticipated entry in their service areas by upgrading their traditional telecommunications networks to provide video services.

Absent competition, Alaska consumers would not enjoy any of the benefits described above. And competition only has been possible where regulators did not erect barriers that prevented private investment in response to consumer demand. The GCI experience in Alaska therefore proves that the competitive process, not regulatory fiat, is the best means to ensure the delivery of universal service at minimum cost to all consumers, even in rural markets. Among the many benefits of competition is its ability to constantly motivate carriers to reduce their operating costs over time, and thereby limit the total amount of universal service support that is required to ensure the delivery of high quality telecommunications services at affordable rates. Indeed, GCI's ability to compete with ACS and other ILECs on factors such as price and innovation provide these carriers the incentives necessary to reduce costs and improve service. As a result, Alaska consumers pay lower retail rates for supported universal services and enjoy innovative new services and packages, which directly serves the universal service goals enumerated in Section 254. The Missoula Plan would undermine the beneficial forces of competition, however, because it eliminates any incentive for the ILECs to become more efficient or innovative by guaranteeing their intercarrier compensation revenues and erecting new barriers to entry, particularly in rural markets. In short, the Missoula Plan, if adopted, will undermine, rather than preserve, universal service.

4. The goal of deploying broadband networks in rural areas does not justify ILEC revenue neutrality.

The rural ILECs are likely to justify the Missoula Plan's commitment to ILEC revenue neutrality on the grounds that they require access to their existing level of intercarrier compensation revenues – even if those revenues are far more than what is needed to actually fund the supported universal services – because such revenues will finance the deployment of advanced telecommunications services. GCI believes that the ubiquitous deployment of broadband is an important public policy goal. It is not, however, necessary to force the customers of other carriers to subsidize rural ILECs in order to achieve this goal. More importantly, the Missoula Plan's ILEC revenue guarantees will distort market entry to favor subsidized ILECs and deter subsidy-free entry by innovative and efficient carriers such as GCI. These outcomes surely are not what Congress had in mind when it enacted Section 254 of the 1996 Act.

GCI provides advanced telecommunications services to many of the most remote locations in Alaska, using various platforms as necessary to expand the reach of its services. GCI's broadband cable modem service is available to approximately 80 percent of Alaskan homes.[72] In more remote areas, GCI offers high-speed Internet service using broadband platforms integrating cable, satellite, and wireless technologies.[73] GCI now offers high-speed wireless Internet services at affordable prices to 121 villages, and serves 19 more villages by partnering with other providers and using wireless or DSL. As a result of GCI's efforts, advanced services are now available in some of the smallest

[72] Demand for GCI's cable modem services grew dramatically after GCI deployed an undersea cable to the continental United States.

[73] *See* Exhibit 2 (showing GCI WISP sites). GCI also integrates DSL into its operations in the Kotzebue region, where it has a unique relationship with the local ILEC that has led to broadband access throughout the region.

and remote villages in Alaska. For example, GCI provides broadband service to Akutan, a village located on Akutan Island in the eastern Aleutians with a population of 713. *More than 50 percent of the households on Akutan subscribe to GCI's high-speed Internet offering.*[74] Importantly, GCI has accomplished its deployment of advanced telecommunications services *without* state or federal subsidies, and with no regulatory assurance that it will earn a return on its investment.

GCI's experience in Alaska is not unique. According to the National Telephone Cooperative Association's ("NTCA") 2006 Broadband Survey, 86 percent of the ILECs surveyed indicated they faced competition from at least one other service provider for at least some of their customers, and 37 percent reported that competitors were serving customers throughout the rural ILEC's study area.[75] The competitive playing field will be skewed, however, if the Commission provides rural ILECs with subsidies for the deployment of advanced telecommunications services through the Missoula Plan's commitment to revenue guarantees.

In effect, the Missoula Plan subsidizes ILECs – but not their competitors – by compensating them for lost intercarrier compensation revenues. The effect of such subsidization will be particularly pernicious with respect to broadband and video services that ILECs are offering in competition with cable, satellite, and licensed and unlicensed WISP providers. The Commission has acknowledged that existing universal service support mechanisms have been used to build out DSL services in rural areas when DSL services are provided over the same outside plant facilities as circuit-switched voice

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[74] In addition, GCI provides high-speed Internet access to 285 rural schools, five regional health organizations, and 70 clinics throughout Alaska.

[75] NTCA 2006 Broadband/Internet Availability Study Report at 9 (August 2006) ("NTCA 2006 Broadband Survey").

services.[76] More particularly, in areas served by rural, rate-of-return ILECs, the investment in broadband and video-capable networks can flow directly into the rate base for supported services. Allowing rural ILECs to use the Missoula Plan's revenue guarantees to support competitive services undercuts universal service goals by impeding investment by competitors. Under such a subsidy scheme, a competitor such as GCI will be forced to compete against an ILEC receiving a subsidy through the new Restructure Mechanism, placing GCI at a significant cost disadvantage. This, in turn, will deter GCI from expanding its deployment of broadband services to other rural markets.

GCI has first-hand experience with the market-distorting effects of subsidized competition. Matanuska Telephone Authority, a rural ILEC, entered the video and high-speed residential and small business broadband markets after dramatically shortening the copper portion of its loops, with the costs of such investment apparently counted as regulated costs and reimbursed from the USF.[77] GCI, which provides video and residential and small business broadband in the same market, built its video network with private capital. Similarly, Ketchikan Public Utilities, in its 2005 Annual Report, touted a project to "read[y] the [outside copper] plant for future high bandwidth applications such as video and high-speed DSL," noting that "due to the fact that this project deals with the local loop cable plant, there is a favorable Universal Service Fund (USF) reimbursement through the cost separations process."[78] This trend is not unique to Alaska. According to

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[76] Availability of Advanced Telecommunications Capability in the United States, Fourth Report to Congress, GN Docket 04-54, at 32, 42 (Sept. 9, 2004).

[77] *In the Matter of the Petition for Suspension and Modification of Certain Section 251(c) Obligations Pursuant to Section 251(f)(2) of the Telecommunications Act of 1996 filed by Matanuska Telephone Association, Inc.*, Regulatory Commission of Alaska, U-05-46 at 30-31 (2005).

[78] Ketchikan Public Utilities, *2005 Annual Budget*, at K-9.

NTCA, more than one-half (59 percent) of the ILECs surveyed provide video service, and approximately one-quarter of responding carriers deployed networks with relatively short average loop lengths (less than 15,000 feet) to facilitate the provision of DSL – with 10 percent deploying networks with very short average loop lengths (less than 9,000) feet.[79]

Even if the new Restructure Mechanism were portable among carriers, it would not wholly alleviate GCI's concerns about the effect of the Missoula Plan on competitive broadband deployment. Under the Commission's current universal service regime, only carriers designated as ETCs may receive universal service support. Although GCI provides telephone service in Anchorage, Fairbanks, and Juneau, and has obtained LEC certification for some other areas, GCI is not certified as an ETC in all the areas in which it provides advanced services. In some of these markets, GCI only provides advanced services – and not the "other core telecommunications services" that comprise universal service.[80] As the Joint Board warned, "because some advanced or high-speed services providers would be ineligible for universal service support," the universal service fund could "skew markets by creating financial incentives to deploy advanced or high-speed services over certain platforms."[81] Put more directly, the new Restructure Mechanism would be in the position of subsidizing the services of some carriers, but not other providers, even where the market already is delivering advanced services today without subsidies. Hence, even if the Commission adopts portability guidelines consistent with

[79] NTCA 2006 Broadband Survey at 7.

[80] *Federal-State Joint Board on Universal Service,* Recommended Decision, FCC 02J-1 at ¶ 16 (rel. July 10, 2002).

[81] *Id.*

its existing rules, and makes the Restructure Mechanism available to all ETCs, GCI still would be placed at a competitive advantage relative to a subsidized ILEC in those markets where GCI has not received ETC designation.

Ensuring ILEC revenue neutrality as a means to deploy broadband services in rural areas also could violate Section 254(k) of the 1996 Act.[82] According to 254(k), a carrier "may not use services that are not competitive to subsidize services that are competitive." It would therefore violate Section 254(k) to compute a subsidy for one service, such as a frequently non-competitive service like voice-grade access to the Public Switched Telephone Network, by including costs that are only necessary to provide a competitive service, such as high-speed Internet access or video. The rural ILECs are likely to respond that they are simply asking for their existing level of intercarrier compensation revenues to support a network that provides multiple services, including voice, broadband, and video. However, the deployment of advanced services, and DSL in particular, requires network investment that is exclusive to the provision of those services. For example, as described above, a significant percentage of NTCA members have reported that they have shortened their loop lengths to provide DSL. But an ILEC does not need to shorten its loops to provide voice service. Instead, these incremental costs only are necessary to provide broadband. Thus, even to the extent that the rural ILECs seek Restructure Mechanism support to maintain their current intercarrier compensation revenues, this probably constitutes too much support, to the extent that they are using it to deploy broadband – a service that is not included in the definition of

[82] 47 U.S.C. § 254(k).

universal service. It also potentially violates the prohibition on cross subsidies in Section 254(k).

There is simply no reason why consumers nationwide should be forced to subsidize the deployment of advanced telecommunications services where market forces alone can perform the same function. The Commission should address this inequity, which is a component of the current universal service regime.[83] It most certainly should not perpetuate this flaw in the existing system by acceding to the rural ILECs' demand for revenue neutrality on the grounds that it is necessary to fund network upgrades to provide broadband or video

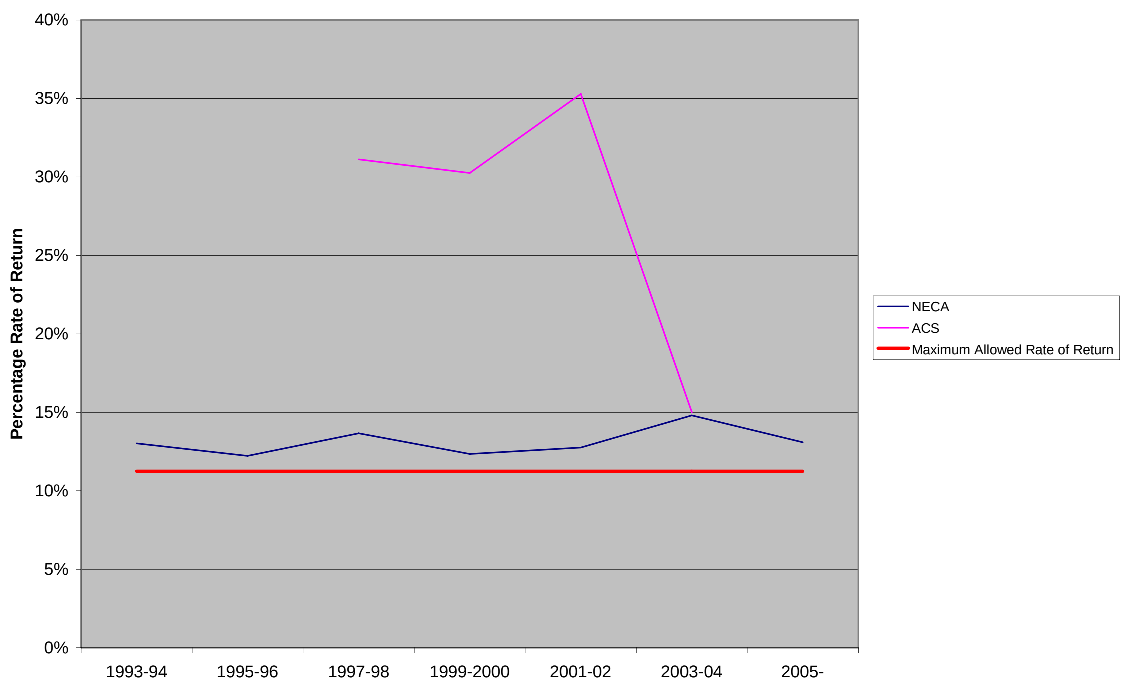
5. The Missoula Plan should not preserve ILEC revenue levels because ILECs are overearning under the current regime.

One of the fundamental shortcomings of the Missoula Plan is that it preserves the ILECs' existing revenue streams flowing from intercarrier compensation payments, and in particular, from carrier access charges. At the outset, GCI opposes the Missoula Plan's attempt to preserve ILEC revenues because the ILECs are overearning under the current intercarrier compensation regime. Take, for example, the ILECs against which GCI competes in Alaska. In Alaska, every ILEC except ACS of Anchorage participates in the NECA pool for interstate access charges. As shown by the chart below, both NECA and ACS of Anchorage have demonstrated a consistent pattern of earnings well above the

[83] *See* Comments of General Communication, Inc., CC Docket No. 96-45, WC Docket No. 05-337 (March 27, 2006) at 14-20 (explaining that the Commission should not consider whether high-cost support is "sufficient" to enable carriers to upgrade their networks to provide access to advanced services).

FCC's authorized rate-of-return of 11.25 percent for interstate switched traffic sensitive services.[84]

NECA and ACS of Anchorage Rates of Return



ACS of Anchorage's overearnings are particularly egregious. In each of the Commission's last four monitoring periods, ACS of Anchorage has earned returns of more than 30 percent.[85] In other words, ACS of Anchorage has regularly earned more than three times the appropriate rate of return. This analysis, of course, only factors in

[84] Specifically, NECA's final Form 492s reflect rates of return for switched traffic sensitive service of 13.02 % for 1993-94; 12.23 % for 1995-96; 13.66 % for 1997-98; 12.34% for 1999-2000; 12.76 % for 2001-02; and 14.81% for 2003-04. *See also July 1, 2004, Annual Access Charge Tariff Filings*, Opposition to Direct Case of National Exchange Carrier Association, Inc. by General Communication, Inc., WC Docket No. 04-372, at 7 (chart) (filed Oct. 22, 2004).

[85] ACS of Anchorage's final Form 492s reflect rates of return for switched traffic sensitive service of 32.12% for 1997-98; 30.26% for 1999-2000; 35.29% for 2001-02; and 15.01% for 2003-04.

the Alaska ILECs' interstate returns. Intrastate access rates in Alaska are much higher than the corresponding interstate rates. Alaska ILECs, moreover, are permitted to earn up to an 11 percent intrastate rate-of-return, which in this era of increased efficiency and declining costs is quite high, while simultaneously benefiting from low Rural Utility Service-financed debt. GCI therefore believes that the Alaska ILECs also are earning more than a reasonable rate of return on their intrastate access services, even assuming that their rates of return are near the state-prescribed 11 percent.

The Missoula Plan would perpetuate ILEC overearning by ensuring that all rate-of-return ILECs – which includes every ILEC in the State of Alaska – continue to recover their existing revenues from interstate access, intrastate access, and reciprocal compensation, on a dollar-for-dollar basis, through increased SLCs and the new Restructure Mechanism. However, as described herein, ILEC revenue guarantees violate the principle of competitive neutrality and, by extension, eliminate the ILECs' incentive to reduce their costs, and increase their efficiency, in response to competitive entry. The net result is that the ILECs never face any incentive to reduce their reliance on the existing level of USF support. In short, the Missoula Plan not only forces consumers to contribute an additional $2.225 billion to universal service – a 32 percent increase in the current $7 billion USF – it eliminates any mechanism that would reduce the level of required support over time.

B. The Commission Should Not Presume that ILECs Are Entitled to Recover Lost Intercarrier Compensation Revenues through Universal Service Mechanisms, Because Doing So Fosters Over-Reliance on the USF.

As discussed herein, one of the fundamental shortcomings of the Missoula Plan is that it presumes that ILECs are entitled to their existing levels of universal service support when, in fact, these levels currently are too high, and should decrease over time. By allowing the ILECs to recover their existing level of revenues through the Restructure Mechanism, the ILECs recover their costs from the customers of other carriers, not their own, even when it is possible to do so. GCI therefore proposes that the Commission force the ILECs to raise their rates for the supported universal services to an affordability benchmark as a prerequisite for drawing federal universal service support. Only if an ILEC is unable to recover costs from its own customers should it be permitted to seek support from the customers of other carriers.

Section 254(e) requires the Commission to provide "sufficient" universal service support.[86] Universal service principles – and responsible program management – dictate that "sufficient" support be no more than is necessary to meet universal service goals. As the Fifth Circuit Court of Appeals explained, "[b]ecause universal service is funded by a general pool subsidized by all telecommunications providers – and thus indirectly by customers – excess subsidization in some cases may detract from universal service by causing rates to unnecessarily rise, thereby pricing some consumers out of the market."[87] Even if excessive support does not lead to unaffordable increases in rates for non-subsidized subscribers, requiring those customers to pay more than is necessary in order to excessively subsidize rates for other (or worse yet, to finance high dividend payments to owners of rural ILECs) is not consistent with maintaining just and reasonable rates. Thus, in deriving any new universal service mechanism, the Commission must be careful to provide the *minimum* amount of support necessary to ensure that rates are affordable

[86] 47 U.S.C. § 254(e).

[87] *Alenco*, 201 F.3d at 620.

and reasonably comparable between rural and urban areas, in conformance with Sections 254(b)(1) and (b)(3).[88]

GCI therefore suggests that the Commission establish an “affordability benchmark” based on a generalized assessment of the ability of a non-Lifeline-eligible end user to bear the cost of their own service, and to provide universal service support only where market-based rates would exceed this threshold. Under the existing regime – which is perpetuated by the Missoula Plan – the Commission has no means to determine the amount of support necessary, or even whether support is necessary in a given area, to comply with the requirements of Section 254. Indeed, without any benchmark for determining whether retail rates are affordable or reasonably comparable, there is no way to assure that support is adequate, but not excessive: Today, USF likely provides high cost support where it is not needed, and may also provide inadequate support where it is needed. The Missoula Plan exacerbates this problem.

There is a simple way to satisfy the statutory command that rates should be affordable and reasonably comparable between urban and rural areas – rural rates should be increased so they are no higher than urban rates. Nothing in the statute suggests – or permits –urban customers to systematically pay higher rates than urban customers. In fact, rates in rural areas often are very low, despite the fact that these areas often are relatively more expensive to serve. The difference between urban and rural rates is not based on cost, but rather on state regulatory choices, such as embedding implicit support in intercarrier compensation or “value of service” rate designs. The net effect is that the

[88] 47 U.S.C. §§ 254(b)(1), (b)(3).

current system rewards State regulatory policies that increase eligibility for federal support and impermissibly burden the USF, in violation of Section 254(f).

These flawed policies are embedded in the Missoula Plan, which compensates ILECs – on a dollar for dollar basis – for their existing intercarrier compensation revenues. Thus, to the extent that the rural ILECs are currently recovering a large percentage of their "costs" through implicit subsidies embedded in intercarrier compensation rates – and not from their end user customers – they will continue to receive the same subsidies under the Missoula Plan. This is particularly troubling given evidence that the ILECs are recovering more than their costs, as shown by their overearnings for interstate switched access services. The Missoula Plan, moreover, perpetuates the difference between urban and rural rates by retaining higher SLCs in non-rural (*i.e.*, Track 1) markets than in rural (*i.e.*, Track 2 and Track 3) markets. This approach is backward: SLCs should be higher in markets where the cost of service is greater or, at the very least, they should be commensurate with the SLC charged by Track 1 carriers.

There is no evidence that increasing rural rates to an affordability benchmark will have a detrimental impact on subscribership levels, and by extension, universal service. For instance, in Wyoming, monthly rates are among the highest in the country, but subscribership also is among the highest in the country. Wyoming's rates in its *lowest* priced non-rural area exceed all but two of the rates reported in the Commission's urban rate survey.[89] However, as of March 2006, Wyoming's in-unit telephone subscribership

[89] Qwest Wyoming's retail residential rates, including SLCs, fees, and taxes, range from \$33.17-\$42.28, depending on the rate zone. *See Federal-State Joint Board on Universal Service*, Federal Joint Petition of the Wyoming Public Service Commission and the

was 94.5 percent, above the national average of 92.8 percent.[90] Notwithstanding its high local service rates, Wyoming's telephone subscribership in 2004 exceeded the national average in *every income group*, including low income groups.[91] These results demonstrate that the Commission cannot use rates alone to measure the affordability and therefore the success of its universal service programs. To the contrary, there is no reason to believe that raising rural rates to the same level as their urban counterparts will result in a decline in subscribership.

There is, moreover, nothing inequitable in asking financially able customers to pay a price that recovers more of the costs of service. A carrier should first ask its own customers to pay a reasonable amount of the costs of service before seeking universal service support, which is generated by contributions from other telecommunications carriers. This is entirely consistent with the wireless model. Wireless carriers have built ubiquitous networks in both urban and rural areas, largely without universal service support. Most wireless carriers also recover all of their costs from their customers. The average wireless bill is $49.30, yet customers – including rural customers – are willing to pay this amount.[92] In fact, there are now more wireless connections than wireless

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Wyoming Office of Consumer Advocate for Supplemental Federal Universal Service Funds for Customer's of Wyoming's Non-Rural Incumbent Local Exchange Carrier, CC Docket No. 96-45, at 10 (filed Dec. 21, 2004).

[90] Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Telephone Subscribership in the United States (Data through March 2006)* at Table 2 (rel. Oct. 20, 2006).

[91] Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Telephone Penetration by Income by State (Data through March 2004)* at Table 4 (rel. March 10, 2005).

[92] CTIA – The Wireless Association, June 2006 Semi-Annual Wireless Industry Survey.

connections in the United States.[93] Clearly, then, asking the subscriber to pay a rate that compensates a carrier for its cost to provide service – or at least a greater portion thereof – is not antithetical to universal service.

The Commission also should not assume that ILECs will not be able to recover a greater percentage of the cost to provide universal service from their customers instead of through federal universal service mechanisms, like the proposed Restructure Mechanism. Many States – including Alaska – have deregulated the ILECs' retail rates. The RCA, for example, has provided non-dominant carriers, including ACS, with substantial flexibility to implement rate and other service changes to most services.[94] And while non-dominant carriers in Alaska may not raise the rates for stand-alone residential and single-line business services by more than 8 percent per calendar year, this cap expires on June 30, 2010, at which time carriers will face no regulatory constraint on their ability to raise prices for these services.[95] Several Alaska ILECs, including Copper Valley Telephone Cooperative, Matanuska Telephone Association, and Interior Telephone Company, have sought this authority. Hence, it is clear that many ILECs, including rural ILECs, already have the legal authority to raise their retail rates to an affordability benchmark.

Finally, forcing the ILECs to recover their costs from their customers – and not the customers of their competitors – is wholly consistent with the principle of competitive neutrality. The Missoula Plan's revenue guarantees – which are funded through universal

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[93] Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Local Telephone Competition – Status as of December 31, 2005*, at Tables 1, 14 (rel. July 2006).

[94] *See* 3 AAC § 53.243.

[95] Notably, this cap on rates does not apply to bundled services or new and repackaged services.

service mechanisms – insulate the ILECs from the forces of competition and, by extension, provide the ILECs no incentive to ever reduce their cost structures. By forcing the ILECs to recover their costs from their customers first, and not the USF, these costs are not protected. In other words, by reducing (or eliminating) the ILECs' subsidies, a competitor can enter a market and undercut the un-subsidized ILEC's prices. This will force the ILEC to reduce its own prices and associated costs, which will reduce the ILEC's overall reliance on USF while ensuring that market-based rates are just and reasonable. In short, breaking the link between universal service subsidies and below-cost rural rates allows competition to flourish in rural markets, which benefits all customers by reducing the strain on universal service. The Commission should therefore reject the Missoula Plan on the basis that it allows ILECs to keep rates for universal service artificially low through subsidies funded by the customers of other carriers. Such a system is unsustainable and perpetuates distinctions among carriers and markets.

C. The Commission Should Not Implement Other Provisions of the Missoula Plan that Have Nothing to do with Universal Service or Intercarrier Compensation Reform.

The Missoula Plan also includes several other "reforms" that are wholly unrelated to either intercarrier compensation reform or the preservation of universal service. These provisions were included in the plan solely to buy the support of one group of carriers – the rural ILECs. Indeed, these provisions underscore that the Missoula Plan is not a true reform package, but rather a vehicle to make the ILECs – and the rural ILECs, in particular – better off by lining their coffers with additional universal service support.

1. A Track 2 or Track 3 carrier that benefits from revenue neutrality should not be able to elect incentive regulation.

GCI is perplexed by the fact that the Missoula Plan provides a rate-of-return carrier in Track 2 or Track 3 with the opportunity to elect an incentive regulation plan "as an incentive to reduce costs."[96] Under such a plan, the rate-of-return carrier's prices and universal service support payments will not be based on cost studies or rates of return.[97] Instead, prices and support payments in a given study area will be set at levels that permit electing Track 2 and Track 3 carriers to recover the same revenue per line as they did immediately prior to electing incentive regulation.[98]

GCI sees no public policy benefit from allowing a rate-of-return Track 2 or Track 3 carrier to elect incentive regulation. As a threshold matter, the carrier's initial rate of return – which is based on the carrier's existing rate of return – probably will be set too high, to the extent that it is based on historic over-earnings. More importantly, however, because the Missoula Plan guarantees revenue neutrality, incentive regulation never reduces the carrier's reliance on universal service support. True incentive regulation, for example, only guarantees that a carrier can charge a certain price; it does not guarantee the carrier a specific level of revenue. Hence, under true incentive regulation, a Track 2 or Track 3 carrier would have an incentive to reduce its costs to maximize its returns.

A reduction in costs leads to a reduction in universal service support. But under the Missoula Plan (similar to USF administration for rate-of-return carriers today), the carrier has no incentive to reduce its costs because it always is guaranteed a specified

[96] Missoula Plan at 80.

[97] *Id.*

[98] *Id.*

amount of revenue per line through the Restructure Mechanism. Why, for example, should a Track 2 or Track 3 carrier cut its costs and earn more from its rates when it can simply earn a federally mandated rate-of-return that is funded by the USF? The incentive regulation portion of the Missoula Plan also could be characterized as "no risk, all reward" because it allows an electing carrier to ask the Commission for a rate increase if its rate of return falls below 10.25 percent. Competitors such as GCI do not operate with such revenue guarantees. The bottom line is that real incentive regulation must place ILEC revenues at risk.

The most offensive aspect of the "incentive regulation" opportunity provided to Track 2 rate-of-return carriers is that it allows them to take advantage of the Full Rural Transport Rule, which shifts all of the carrier's transport costs between its network and that of a competitor to the competitor. GCI sees no reason that Track 2 rate-of-return carriers electing "incentive regulation" should benefit from the Full Rural Transport Rule, for two reasons. First, there is no logical connection between the Full Rural Transport Rule and incentive regulation. A Track 2 carrier that transitions from rate-of-return regulation to incentive regulation will not face an increase in its transport costs that would justify allowing it to shift a greater percentage of those costs to its competitors. Second, carriers electing incentive regulation reap the benefits of lower transport costs without forfeiting revenue guarantees. In other words, the combination of policies conveys significant benefits to electing carriers without any corresponding benefits to consumers, who are prevented from enjoying the benefits of competition.

2. The Commission should not increase the size of the High Cost Loop Fund

The Missoula Plan proposes to re-index the High Cost Loop Fund ("HCLF") based on the current nationwide average cost per loop for rural telephone companies.[99] After the size of the fund has been recalculated under the new index, the total amount of HCLF support will be increased in three equal steps over a 24-month period and then recapped at that level. Thereafter, the size of the fund will be subject to annual adjustments based on a rural growth factor.

GCI sees no basis to re-index and increase the size of the HCLF. The Missoula Plan already guarantees ILEC revenue neutrality through SLC increases and the Restructure Mechanism. As such, additional revenue guarantees through the HCLF are unnecessary, and may actually result in double recovery of the rural ILECs' costs. Moreover, by increasing the size of the HCLF, the Missoula Plan eliminates any incentive for relatively high cost recipients to control their costs. If anything, support should be lowered in order to spur carriers to operate in a more economically efficient manner. Finally, the current level of HCLF support has enabled scores of rural ILECs to upgrade their loop plant to provide non-voice services, such as broadband and video. According to NECA, more than 94 percent of its member companies are equipped with

[99] The HCLS ostensibly lowers the rural ILECs' intrastate rates by shifting some loop costs from the intrastate jurisdiction into the interstate jurisdiction. These costs are then recovered through the HCLS mechanism, rather than through interstate rate elements. The amount of loop costs that can be shifted to the interstate jurisdiction is limited by a nationwide cap, which grows annually by a Rural Growth Factor that combines rate inflation with the growth rate of lines in rural telephone company study areas.

DSL broadband access.[100] GCI therefore questions the rural ILECs' request for additional HCLF support.

The Missoula Plan also eliminates Commission rules that base a carrier's HCLF support on the size of the carrier's study area. This proposal would effectively increase HCLF support received by large carriers and thus increase the costs of the fund without justification.

In summary, GCI believes the re-indexing of the HCLF as proposed by the Missoula Plan proponents should be rejected. The rural ILECs have not demonstrated the need for any increase in the size of this funding mechanism, nor have they demonstrated any relationship between the proposed HCLF increases and intercarrier compensation reform. The rural ILECs should not be permitted to use intercarrier compensation reform as a vehicle to revise wholly unrelated Commission rules and regulations.

V. THE COMMISSION MUST REJECT THE MISSOULA PLAN BECAUSE IT FAILS TO ACHIEVE REAL INTERCARRIER COMPENSATION REFORM AND THE PRESERVATION OF UNIVERSAL SERVICE.

A. The Missoula Plan is Bad for Competition and therefore Bad for Consumers.

As described herein, the Missoula Plan does not achieve uniformity among jurisdictions, markets, carriers, or traffic. While it is presented as a proposal to reform intercarrier compensation, in reality, it simply retains old regulatory distinctions, and imposes anticompetitive new intercarrier compensation rates and structures, that are meant to benefit one group of carriers – the ILECs – at the expense of all others. This, in turn, harms the development of competition, which ultimately harms consumers.

[100] National Exchange Carrier Association (NECA), Technology Planning and Implementation Group, Trends 2006: Making Progress with Broadband (2006).

The Missoula Plan undermines the development of true, facilities-based competition in myriad ways. Under the Missoula Plan, for example, a non-ILEC that competes with a Track 2 or Track 3 carrier is forced to charge lower, Track 1 rates, while the ILEC is allowed to collect higher Track 2 or Track 3 rates, at least with regard to access charges. The net effect is that the difference in access charge rates keeps a non-ILEC competitor out of the market by artificially denying it revenues that otherwise would be available in that market.

The Missoula Plan also creates a new "universal service" mechanism – the Restructure Mechanism – that only compensates ILECs for their reduced intercarrier compensation revenues, despite the fact that facilities-based competitors will be forced to absorb the same reductions. This subsidizes the ILEC, to the detriment of facilities-based competitors, by providing the ILEC with a significant cost advantage. The net effect is that some competitors will not be able to compete on price, even if more efficient than the ILEC, and some competitors will not be induced to enter that market because they will not be able to gain the full advantage of their efficiencies.

In addition, the Missoula Plan imposes onerous new interconnection obligations on competitors that are wholly unrelated to the intercarrier compensation "reforms" included in the plan. As GCI explained, allowing ILECs to unilaterally re-designate "edges," or points of interconnection, strands substantial competitive investment in interconnection and transport facilities and increases the cost of interconnection. Likewise, the Alaska ILECs' tandem-based interconnection proposal potentially eliminates the competitive transport market in Alaska by replacing it with USF- and tariff pool-supported tandem switches and transport links. And, by allowing the rural ILECs' to shift their transport obligations to their competitors, the Missoula Plan increases a competitor's costs, making it impossible for the competitor to compete with the ILEC on price. Taken together, the interconnection provisions in the Missoula Plan will retard the development of facilities-based competition, particularly in rural markets.

At the same time it undermines competitive incentives, the Missoula Plan places greater strain on the already bloated USF by preserving ILEC revenue streams, which should be eroded through the development of competition. As a threshold matter, the ILECs are over-earning under the current intercarrier compensation regime, so preserving their revenues through a policy of revenue neutrality makes all consumers contribute more than is necessary to fund universal service. More troubling still is that these revenues are preserved forever, ignoring the industry-wide declining cost curve and despite the fact that the ILECs are losing traffic, and revenues, to other carriers.

At least in markets where competition is permitted to flourish, a competitor can compete with the ILEC on price by reducing its costs and becoming more efficient. The ILEC will be forced to respond in kind. This, in turn, will reduce the ILEC's reliance on the USF to the extent that it is forced provide the supported services at a lower total cost. The Missoula Plan, however, erects new barriers to competitive entry that foreclose the cost reductions that can and should result from the advent of competition. The ultimate result is that consumers throughout the country are forced to contribute more than is truly necessary to fund universal service.

Finally, the Missoula Plan perpetuates the distinction between rural and non-rural markets, leaving little if any room for competition and effectively setting rural communications policy back by 20 years. This is because the Missoula Plan provides rural carriers – designated as Track 2 and Track 3 carriers – with particularly preferential intercarrier compensation rates and structures. For example, in Track 3 markets, the Missoula Plan preserves the distinction between "reciprocal compensation" and "access" traffic. It also allows Track 3 carriers to keep their intercarrier compensation rates at levels far above the rates charged by non-rural carriers, or even competitors operating within the same rural market. By exempting rural carriers from many of its provisions, the Missoula Plan fails to achieve comprehensive reform. As a result, rural customers will be deprived of the same range of broadband services as the rest of the country, the same statewide and nationwide calling plans as the rest of the country, and investment for all providers will continue to be choked by arbitrage, litigation, and regulatory uncertainty. These outcomes are made worse by the fact that the onerous new interconnection provisions applicable in Track 2 and Track 3 markets erect substantial barriers to entry. Hence, consumers in rural markets – unlike their urban counterparts – will never receive the benefits of competition, such as new services, improved service quality, and lower prices.

B. The Missoula Plan Does Not Fulfill the Commission's Goals for Intercarrier Compensation Reform.

The Missoula Plan also fails to fulfill the Commission's three primary objectives for intercarrier compensation reform.

1. First, the Missoula Plan will lead to more economic inefficiency. Among the many different rate components, the Missoula Plan retains the distinction between "reciprocal compensation" and "access" traffic in Track 3 markets. As a result, carriers will have to maintain systems that can charge different rates depending on whether the traffic is access or non-access, when it is more efficient to eliminate this distinction and

exchange traffic at a uniform rate. Not only does this impose unnecessary costs on carriers operating in Track 3 markets, it also creates opportunities for arbitrage. To the extent there is a difference between the rates for access and non-access traffic, a carrier will have an incentive to strip signaling information from a call in an attempt to reduce its intercarrier compensation costs. The same concern applies to the retention of intrastate access charge rates that are different from the corresponding interstate rates.

The Missoula Plan's interconnection provisions also promote inefficiency. For example, the transport rules in Track 2 and Track 3 markets require competitors to subsidize the rural ILECs' antiquated, inefficient, and costly network architecture. Forcing Track 2 and Track 3 carriers to pay for their own transport networks, by contrast, gives them an incentive to reduce their costs by increasing their efficiency. Likewise, the Alaska ILECs' attempt to force tandem-based interconnection – despite the fact that the Alaska network is operating efficiently without access tandems today – would allow the ILECs to use universal service to deploy access tandems and transport links, for no reason other than to win a piece of the competitive transport market. Indeed, the Alaska ILECs have not presented any economic or technical justification to support the deployment of these new facilities.[101] The RCA, moreover, has rejected identical requests from the ILECs on every occasion over the last 15 years. Clearly, if there was any technical or economic reason to deploy tandems in Alaska, the RCA would have honored the ILECs' requests by now. It has not.

[101] That being said, the Alaska ILECs are free today to deploy such facilities. They just cannot do so with the expectation of forcing other providers to use them or having end user customers pay for them via universal service support and pooled tariff rates.

Finally, and most significantly, the Missoula Plan's new Restructure Mechanism rewards ILECs for their inefficiency through a policy of revenue neutrality. In addition to permanently maintaining the ILECs' current revenue streams, however, the Missoula Plan erects new barriers to entry, particularly in rural markets. The problem with this combination of policies is that the ILECs never face any incentive to reduce their costs and operate more efficiently because the Missoula Plan insulates them from the forces of competition. Consumers ultimately pay the price.

2. Second, the Missoula Plan does not advance universal service. The new Restructure Mechanism guarantees the ILECs' existing level of intercarrier compensation revenues through subsidy mechanisms funded by other carriers' customers. There are several problems with this approach. As a threshold matter, the ILECs are over-earning today, so preserving their revenues merely maintains their current over-reliance on universal service support. Further, the Restructure Mechanism is not portable, so it undermines the development of competition by providing the ILEC with a significant cost advantage over its competitors. Finally, the Restructure Mechanism guarantees ILEC revenues through subsidy mechanisms funded by other carriers' customers, instead of forcing the ILEC to first recover its costs from its own customers. If the ILECs recovered their costs from their own subscribers – and not through newly created, ILEC-specific subsidies – a competitor could enter the market and undercut the ILEC's price. The ILEC, in turn, would be forced to reduce its own rates, and associated costs, in order to compete. As a consequence, universal service support would be subject to the forces of competition, and the ILEC's level of support could be eroded over time. Based on its experience in Alaska, GCI believes that competition is the best means to deliver universal

service broadly and at the lowest cost to all consumers. But the Missoula Plan eliminates the beneficial effect of competition on universal service.

3. Third, the Missoula Plan does not eliminate regulatory distinctions. Under the Missoula Plan, carriers charge different rates when they perform the same functions within the same market. For instance, the Missoula Plan perpetuates the distinction between access and non-access traffic by allowing all LECs, regardless of track, to charge IXCs some sort of originating rate, despite the fact that there is no functional difference between access and non-access traffic. The Missoula Plan also allows rural ILECs – and Track 3 ILECs, in particular – to charge intercarrier compensation rates that are far above the rates charged by non-rural carriers. Further, the Missoula Plan structures intercarrier compensation charges differently across markets. Track 3 carriers, for example, retain the distinction between reciprocal compensation and access charges, despite the fact these rates eventually become unified in Track 1 and Track 2 markets. And the Missoula Plan maintains the distinction between intrastate and interstate access charges. These distinctions, which are not based on economics or technology, create winners and losers. And in every instance, the winner is the ILEC.

VI. A TRUE INTERCARRIER COMPENSATION REFORM PLAN THAT IS CONSISTENT WITH THE COMMISSION'S PRINCIPLES WOULD INCLUDE THE FOLLOWING ELEMENTS.

If the Commission seeks to implement true intercarrier compensation reform that is consistent with its own principles, it should undertake the following reforms.

A. The Commission Should Establish a National, Uniform Rate for the Termination of All Traffic.

The most important reform that the Commission must adopt is the creation of a system in which intercarrier compensation rates and structures are uniform across jurisdictions, regardless of the historical categorization of the traffic that is carried, the type of carrier originating and terminating traffic, and the market served. In other words, the ultimate goal should be synchronization. The only way to achieve this outcome is to implement a national, uniform rate for all carriers and all terminating traffic. The implementation of a national, uniform rate for all terminating traffic – and the total elimination of all originating rates – would have the following benefits.

First, it would eliminate the distinction between jurisdictions, and more specifically, the historic difference in intrastate versus interstate access charge rates. In Alaska, this would promote technological neutrality, because wireless carriers would no longer have a competitive advantage over wireline IXCs based on their ability to terminate calls, on a statewide basis, at reciprocal compensation rates, while the IXC is charged both intrastate originating and terminating access for the same calls.

Second, it would promote the principle of competitive neutrality, because all carriers performing the same functions within the same market would be presented with the same revenue opportunity. This, in turn, would promote facilities-based competition. IXCs, moreover, would not be placed a competitive disadvantage relative to other carriers, such as wireless carriers, that only are required to pay a terminating rate, as opposed to both originating and terminating rates, even though the traffic exchanged is functionally the same.

Third, it would promote efficiency. To the extent that all carriers charge the same rate, they have an incentive to increase their revenues by reducing their costs. And to the extent that universal service support is based on a carrier's cost of providing the supported services, any cost reduction has the beneficial effect of reducing that carrier's reliance on the USF.

Fourth, it would reduce opportunities for arbitrage. To the extent that all traffic is exchanged at the same rate, a carrier has no incentive to misidentify the origin of a call (*i.e.*, access versus non-access, or intrastate versus interstate), because it simply doesn't matter for intercarrier compensation purposes.

Finally, it would promote geographic rate averaging and rate integration, in conformance with Section 254(g). To the extent that intercarrier compensation rates are uniform, carriers would be able to offer the same long distance rates and plans to consumers in rural and high cost areas, including non-contiguous States and territories, as are offered to urban consumers in the contiguous States. This is because the costs to originate and terminate calls would be the same everywhere.

B. Any Reforms to Universal Service Should Reduce Reliance on Universal Service Funding and Maintain Competitive Neutrality.

To the extent that the Commission believes that its universal service support rules should be revised to accommodate reductions in intercarrier compensation rates, GCI believes that any such revisions should be consistent with the following principles.

First, the Commission should not start with the presumption that universal service reform must guarantee revenue neutrality for the ILECs, at least with regard to their existing intercarrier compensation revenues. There has been little state or federal oversight of the ILECs' rates since the passage of the 1996 Act, and in fact, at the State level, the trend has been to deregulate the ILECs' retail rates. Moreover, the Commission's own data shows that the ILECs are overearning with respect to interstate access services. In other words, there is no longer any connection between the ILECs' rates – either their intercarrier compensation rates or their retail rates – and the costs they incur to provide universal service. Revenue neutrality is therefore likely to perpetuate ILEC over-earnings, to the detriment of the USF. Real reform, by contrast, would wean the ILECs from their over-reliance on universal service support.

Second, any universal service mechanism should force a carrier to recover its cost to provide the supported universal services from its customers and not its competitors. As stated above, many States – including Alaska – have deregulated the ILECs' retail rates. Accordingly, the Commission should not assume that ILECs would not be able to recover the costs of their networks if intercarrier compensation rates were reduced. Further, by forcing the ILECs to recover their costs from their customers first, and not from exclusive subsidies funded by the USF, these costs (or perhaps more accurately stated, these revenue expectations) are not maintained in perpetuity. By reducing (or eliminating) ILEC-specific subsidies, a competitor can enter a market and undercut the un-subsidized ILEC's prices. This will force the ILEC to reduce its own prices and associated costs, which will reduce the ILEC's overall reliance on USF while ensuring that market-based rates are just and reasonable.

Finally, only in those markets where services would be rendered unaffordable by unsubsidized rates should the Commission provide additional support to offset the impact of a reduction in intercarrier compensation rates. Any such mechanisms must be consistent with the following principles, however. The mechanism must be portable among all ETCs, regardless of the technology that a carrier uses to provide the supported universal services to an end user customer. Further, the mechanism must be distributed to all ETCs on a per-line basis, so as a carrier loses a line, it loses the universal service support associated with that line.   These principles are critical to ensuring that any new universal service mechanism preserves competitive neutrality. Competition, after all, is the best means to deliver universal service broadly and the lowest possible cost.

VII. CONCLUSION

Based on the foregoing, the Commission should reject the Missoula Plan and adopt real intercarrier compensation reform as set forth herein.

Respectfully submitted,

/s/

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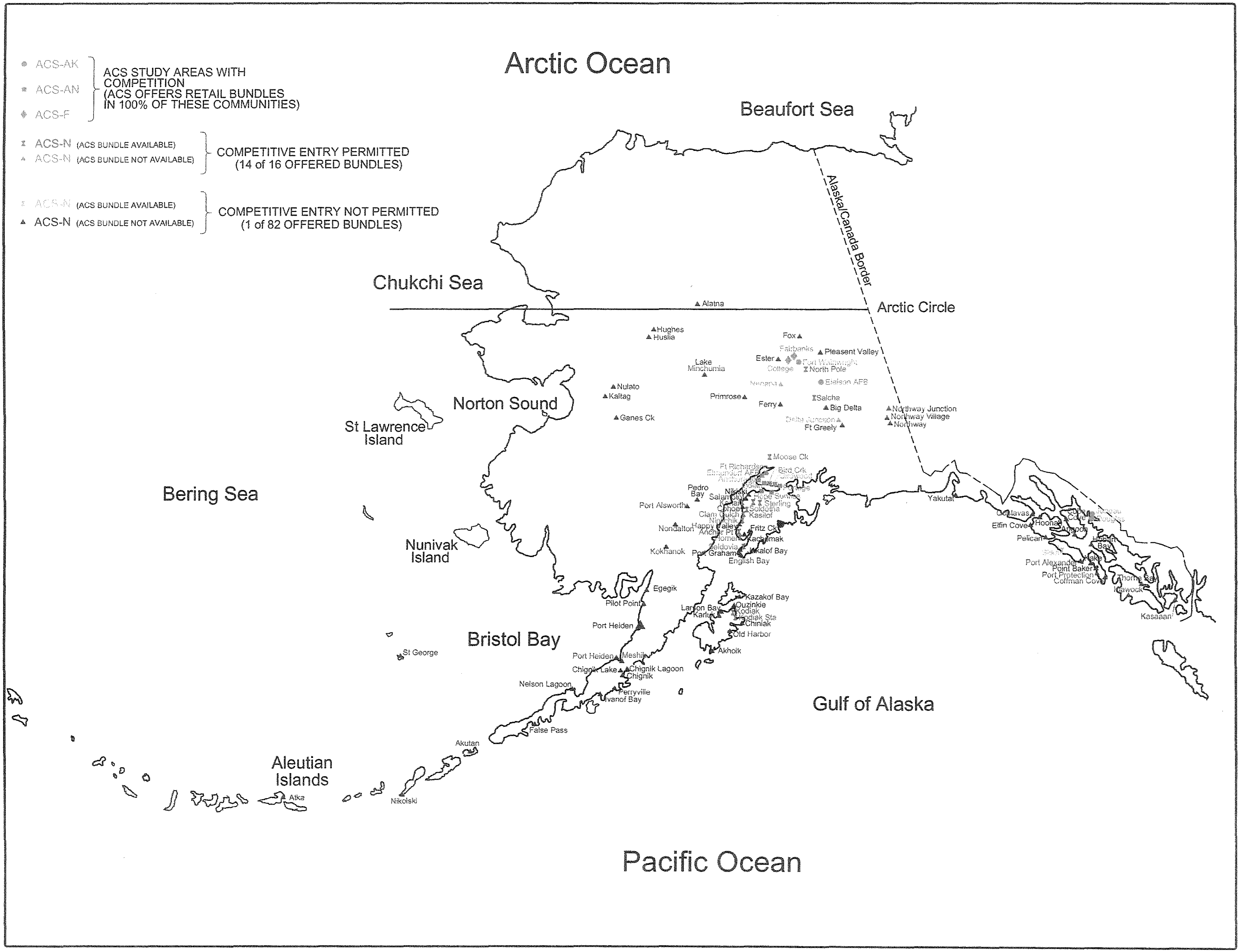
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ACS STUDY AREAS WITH COMPETITION (ACS OFFERS RETAIL BUNDLES IN 100% OF THESE COMMUNITIES)
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Beaufort Sea
Alaska/Canada Border
Chukchi Sea
Arctic Circle
Alatna
Hughes
Huslia
Fox
Fairbanks
Pleasent Valley
Ester
College
North Pole
Lake Minchumia
Eielson AFB
Nulato
Kaltag
Primrose
Salcha
Ferry
Big Delta
Northway Junction
Northway Village
Northway
Ganes Ck
Ft Greely
Norton Sound
St Lawrence Island
Moose Ck
Bering Sea
Pedro Bay
Port Alsworth
Yakutat
Nondalton
Kasilof
Fritz Ck
Kachemak
Seldovia
Port Graham
Nanwalek Bay
English Bay
Kokhanok
Nunivak Island
Egegik
Pilot Point
Kazakof Bay
Ouzinkie
Kodiak
Larsen Bay
Karluk
Chiniak
Old Harbor
Akhiok
Port Heiden
Bristol Bay
St George
Meshik
Chignik Lake
Chignik Lagoon
Chignik
Nelson Lagoon
Perryville
Ivanof Bay
False Pass
Akutan
Aleutian Islands
Atka
Nikolski
Gulf of Alaska
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Port Protection
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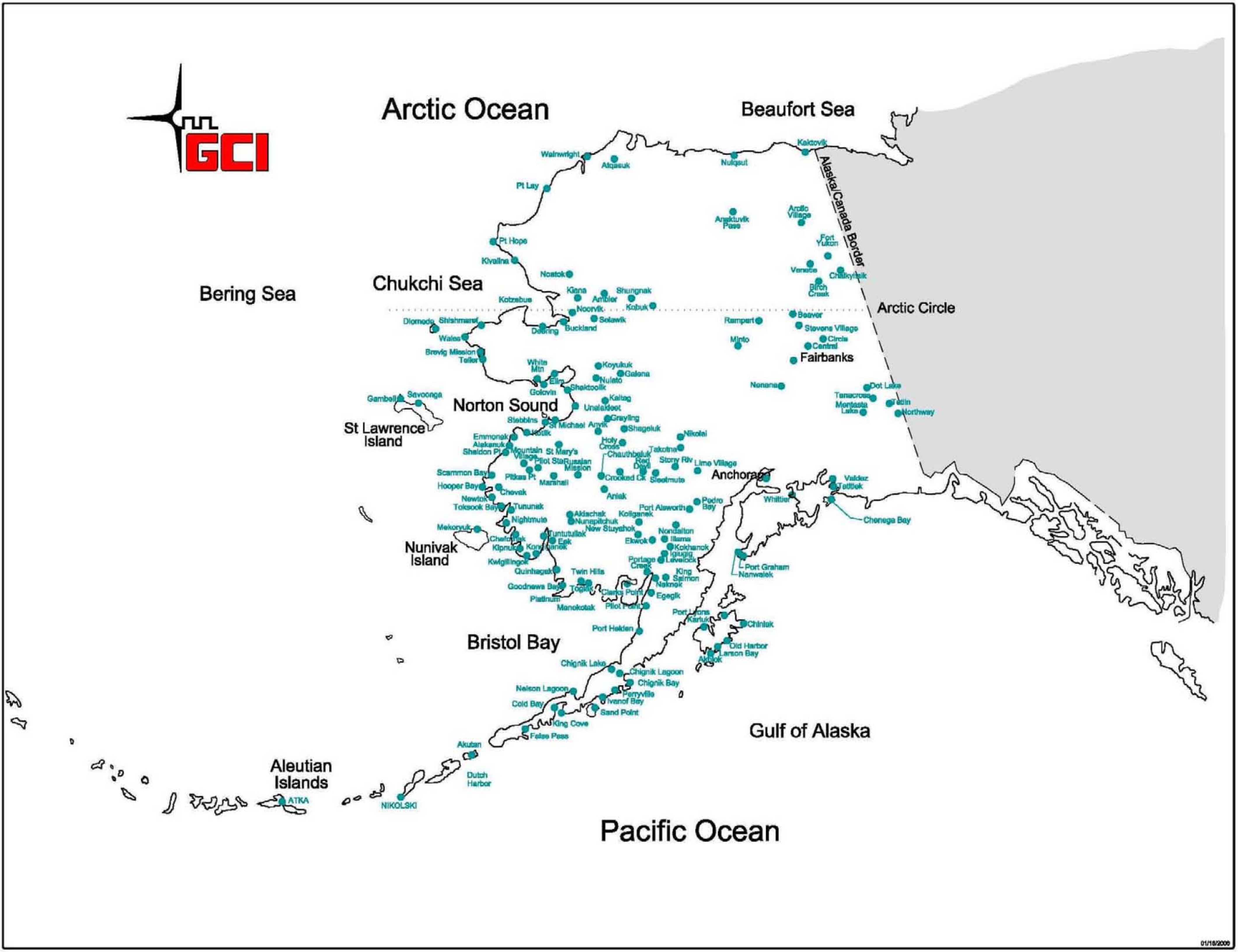
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Pacific Ocean
Fairbanks
Anchorage
Wainwright
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Fort Yukon
Venetie
Chalkyitsik
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Selawik
Buckland
Deering
Diomede
Shishmaref
Wales
Brevig Mission
Teller
Rampart
Beaver
Stevens Village
Circle
Central
Minto
Nenana
White Mtn
Elim
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Nulato
Galena
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Unalakleet
Gambell
Savoonga
Dot Lake
Tanacross
Tetlin
Northway
Stebbins
St Michael
Anvik
Grayling
Shageluk
Kotlik
Emmonak
Alakanuk
Sheldon Pt
Mountain Village
St Mary's
Pilot Sta
Russian Mission
Holy Cross
Chauthbaluk
Nikolai
Takotna
Stony Riv
Lime Village
Red Devil
Scammon Bay
Pitkas Pt
Marshall
Crooked Ck
Sleetmute
Hooper Bay
Chevak
Aniak
Valdez
Tatitlek
Whittier
Chenega Bay
Newtok
Toksook Bay
Tununak
Nightmute
Akiachak
Nunapitchuk
Koliganek
Port Alsworth
Pedro Bay
Mekoryuk
New Stuyahok
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Pilot Point
Port Lions
Karluk
Chiniak
Port Heiden
Old Harbor
Larson Bay
Akhiok
Chignik Lake
Chignik Lagoon
Chignik Bay
Nelson Lagoon
Perryville
Ivanof Bay
Cold Bay
Sand Point
King Cove
False Pass
Akutan
Dutch Harbor
ATKA
NIKOLSKI